CANADA LAW BOOK

MARTIN'S
ANNUAL CRIMINAL CODE
2018

CUMULATIVE LEGISLATIVE AND CASE LAW SUPPLEMENT

Between supplements, for up-to-date amendments to the *Criminal Code* and the other Acts and features in your Martin's, please see our web site at: www.carswell.com.

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LEGISLATIVE UPDATE

This supplement incorporates the following legislative developments:

1. An Act to amend the *Controlled Drugs and Substances Act and to make related amendments to other Acts*, S.C. 2017, c. 7 (formerly Bill C-37) received Royal Assent on May 18, 2017, with certain provisions coming into force on that date. Among other things, this Act amends the *Controlled Drugs and Substances Act* to:
   - Simplify the process of applying for n exemption for a supervised consumption site;
   - Prohibit the importation of designated devices;
   - Expand the offence of possession, etc. of anything used to produce or traffic in methamphetamine;
   - Authorize the Minister to temporarily add substances to a schedule;
   - Require information from persons who conduct certain activities in relation to controlled substances; and
   - Introduce an administrative monetary penalties scheme.

   This Act also makes related amendments to the *Criminal Code* and other Acts.

2. The *Criminal Code* is amended by S.C. 2017, c. 13, ss. 3 and 4, which came into force upon receiving Royal Assent on June 19, 2017. The Act amends the definition of "identifiable group" in s. 318(4) and also amends the principles that a court shall take into consideration on sentencing in s. 718.2(*a*) to include evidence that the offence was motivated by bias, prejudice or hate based on gender identity or expression.

3. Item 11 of the schedule to the *Canada Evidence Act* is amended by s. 41 of S.C. 2017, c. 9, which came into force on June 19, 2017.

4. The *Journalistic Sources Protection Act*, S.C. 2017, c. 22, came into force upon receiving Royal Assent on October 18, 2017. Section 2 of this Act amends the *Canada Evidence Act* to protect the confidentiality of journalistic sources. Section 3 amends the *Criminal Code* concerning the issuance of search warrants relating to a journalist.

5. The *Criminal Code* is amended by S.C. 2017, c. 23, s. 1, which came into force upon receiving Royal Assent on December 12, 2017. This enactment

amends the *Criminal Code* offence of mischief in relation to religious property.

6. On December 12, 2017, the *Preclearance Act, 2016*, S.C. 2017, c. 27, received Royal Assent. Sections 61 and 62 make related amendments to the *Criminal Code*. These sections will come into force on a date to be fixed by order of the Governor in Council.

7. The *Budget Implementation Act, 2017, No. 2*, S.C. 2017, c. 33, s. 255, received Royal Assent on December 14, 2017. Section 255 makes consequential amendments to the *Criminal Code*. This provision will come into force on a date to be fixed by order of the Governor in Council.

8. Schedule I of the *Controlled Drugs and Substances Act* was amended on December 8, 2017 by SOR/2017-275.

9. Schedule III of the *Controlled Drugs and Substances Act* was amended on December 13, 2017 by SOR/2017-249.

10. Schedules I and VI of the *Controlled Drugs and Substances Act* were amended on December 27, 2017 by SOR/2017-277.

The following is amending legislation:

Amended 2017, c. 7, ss. 54, 56, 58, 59(1), 60(1), 61, 64 to 68; ss. 56 in force on Royal Assent, May 18, 2017; ss. 54, 58, 59, 60(1), 61, 64 to 68 to come into force by order of the Governor in Council

Amended 2017, c. 13, ss. 3, 4; in force on Royal Assent, June 19, 2017

Amended 2017, c. 22, s. 3; in force on Royal Assent, October 18, 2017

Amended 2017, c. 23, s. 1; in force on Royal Assent and conditions satisfied, December 12, 2017

Amended 2017, c. 27, ss. 61, 62; to come into force by order of the Governor in Council

Amended 2017, c. 33, s. 255; to come into force by order of the Governor in Council

Section 83.13

1. Subsection 83.13(4) amended by replacing paras. (*a*) and (*b*) and by enacting para. (*c*), 2017, c. 7, s. 54(1) (to come into force by order of the Governor in Council):

(*a*) the power to make an interlocutory sale of perishable or rapidly depreciating property;

(*b*) the power to destroy, in accordance with subsections (5) to (8), property that has little or no value; and

(*c*) the power to have property, other than real property or a conveyance, forfeited to Her Majesty in accordance with subsection (8.1).

2. Section 83.13 amended by replacing subsec. (5), 2017, c. 7, s. 54(2) (to come into force by order of the Governor in Council):

Application for destruction order

(5) Before a person who is appointed to manage property destroys property that has little or no value, they shall apply to a judge of the Federal Court for a destruction order.

3. Section 83.13 amended by replacing subsec. (6), 2017, c. 7, s. 54(3) (to come into force by order of the Governor in Council):

Notice

(6) Before making a destruction order, a judge shall require notice in accordance with subsection (7) to be given to and may hear any person who, in the judge's opinion, appears to have a valid interest in the property.

4. Section 83.13 amended by replacing subsecs. (7) to (9) and by enacting subsecs. (8.1) and (9.1), 2017, c. 7, s. 54(4) (to come into force by order of the Governor in Council):

Manner of giving notice

(7) A notice shall

(*a*) be given in the manner that the judge directs or that may be specified in the rules of the Federal Court; and

(*b*) specify the effective period of the notice that the judge considers reasonable or that may be set out in the rules of the Federal Court.

Destruction Order

(8) A judge shall order that the property be destroyed if they are satisfied that the property has little or no financial or other value.

Forfeiture order

(8.1) On application by a person who is appointed to manage the property, a judge of the Federal Court shall order that the property, other than real property or a conveyance, be forfeited to Her Majesty to be disposed of or otherwise dealt with in accordance with the law if

(*a*) a notice is given or published in the manner that the judge directs or that may be specified in the rules of the Federal Court;

(*b*) the notice specifies a period of 60 days during which a person may make an application to the judge asserting their interest in the property; and

(*c*) during that period, no one makes such an application.

When management order ceases to have effect

(9) A management order ceases to have effect when the property that is the subject of the management order is returned in accordance with the law, destroyed or forfeited to Her Majesty.

For greater certainty

(9.1) Before making a destruction order, a judge shall require notice in accordance with subsection (7) to be given to and may hear any person who, in the judge's opinion, appears to have a valid interest in the property.

Section 117.071

Section 117.071 enacted, to follow s. 117.07, 2017, c. 27, s. 61 (to come into force by order of the Governor in Council):

Preclearance officers

117.071 Despite any other provision of this Act, but subject to section 117.1, no "preclearance officer", as defined in section 5 of the *Preclearance Act, 2016*, is guilty of an offence under this Act or the *Firearms Act* by reason only that the preclearance officer

(*a*) possesses a firearm, a prohibited weapon, a restricted weapon, a prohibited device or any prohibited ammunition in the course of or for the purpose of their duties or employment;

(*b*) transfers or offers to transfer a firearm, a prohibited weapon, a restricted weapon, a prohibited device, any ammunition or any prohibited ammunition in the course of their duties or employment;

(*c*) exports or imports a firearm, a prohibited weapon, a restricted weapon, a prohibited device or any prohibited ammunition in the course of their duties or employment; or

(*d*) fails to report the loss, theft or finding of any firearm, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance that occurs in the course of their duties or employment or the destruction of any such thing in the course of their duties or employment.

Section 183

The definition of "offence" in s. 183 amended by striking out "or" at the end of subpara. (ii), by adding "or" at the end of subpara. (iii) and by adding the following after subpara. (iii), 2017, c. 7, s. 56:

(iv) section 7.1 (possession, sale, etc., for use in production or trafficking),

Section 188

1. Subsection 188(4) amended by replacing para. (*c*), 2017, c. 33, s. 255(1) (to come into force by order of the Governor in Council):

(*c*) in the Provinces of Nova Scotia, British Columbia and Prince Edward Island, and in the Yukon and the Northwest Territories, the Chief Justice of the Supreme Court;

2. Subsection 188(4) amended by replacing para. (*f*), 2017, c. 33, s. 255(2) (to come into force by order of the Governor in Council):

(*f*) in Nunavut, the Chief Justice of the Nunavut Court of Justice.

Section 318

Subsection 318(4) replaced, 2017, c. 13, s. 3:

Definition of *identifiable group*

(4) In this section, identifiable group means any section of the public distinguished by colour, race, religion, national or ethnic origin, age, sex, sexual orientation, gender identity or expression, or mental or physical disability.

Section 430

1. The portion of subsec. 430(4.1) before para. (*a*) replaced, 2017, c. 23, s. 1(1):

Mischief relating to religious property, educational institutions, etc.

(4.1) Everyone who commits mischief in relation to property described in any of paragraphs (4.101)(*a*) to (*d*), if the commission of the mischief is motivated by bias, prejudice or hate based on colour, race, religion, national or ethnic origin, age, sex, sexual orientation, gender identity or expression or mental or physical disability,

2. Section 430 amended by enacting subsec. (4.101) following subsec. (4.1), 2017, c. 23, s. 1(2):

Definition of property

(4.101) For the purposes of subsection (4.1), "property" means

- **(*a*) a building or structure, or part of a building or structure, that is primarily used for religious worship — including a church, mosque, synagogue or temple — , an object associated with religious worship located in or on the grounds of such a building or structure, or a cemetery;**
- **(*b*) a building or structure, or part of a building or structure, that is primarily used by an "identifiable group" as defined in subsection 318(4) as an educational institution — including a school, daycare centre, college or university — , or an object associated with that institution located in or on the grounds of such a building or structure;**
- **(*c*) a building or structure, or part of a building or structure, that is primarily used by an "identifiable group" as defined in subsection 318(4) for administrative, social, cultural or sports activities or events — including a town hall, community centre, playground or arena — , or an object associated with such an activity or event located in or on the grounds of such a building or structure; or**
- **(*d*) a building or structure, or part of a building or structure, that is primarily used by an "identifiable group" as defined in subsection 318(4) as a residence for seniors or an object associated with that residence located in or on the grounds of such a building or structure.**

Section 462.331

1. Subsection 462.331(3) amended by replacing paras. (*a*) and (*b*) and by enacting para. (*c*), 2017, c. 7, s. 58(1) (to come into force by order of the Governor in Council):

- (*a*) the power to make an interlocutory sale of perishable or rapidly depreciating property;
- (*b*) the power to destroy, in accordance with subsections (4) to (7), property that has little or no value; and

(*c*) the power to have property, other than real property or a conveyance, forfeited to Her Majesty in accordance with subsection (7.1).

2. Section 462.331 amended by replacing subsecs. (4) and (5), 2017, c. 7, s. 58(2) (to come into force by order of the Governor in Council):

Application for destruction order

(4) Before a person who is appointed to manage property destroys property that has little or no value, they shall apply to a court for a destruction order.

Notice

(5) Before making a destruction order, a court shall require notice in accordance with subsection (6) to be given to and may hear any person who, in the court's opinion, appears to have a valid interest in the property.

3. Subsection 462.331(6) amended by replacing paras. (*a*) and (*b*), 2017, c. 7, s. 58(3) (to come into force by order of the Governor in Council):

(*a*) be given in the manner that the court directs or that may be specified in the rules of the court; and

(*b*) specify the effective period of the notice that the court considers reasonable or that may be set out in the rules of the court.

4. Section 462.331 amended by replacing subsecs. (7) and (8) and by enacting subsecs. (7.1) and (8.1), 2017, c. 7, s. 58(4) (to come into force by order of the Governor in Council):

Destruction order

(7) A court shall order that the property be destroyed if it is satisfied that the property has little or no financial or other value.

Forfeiture order

(7.1) On application by a person who is appointed to manage the property, a court shall order that the property, other than real property or a conveyance, be forfeited to Her Majesty to be disposed of or otherwise dealt with in accordance with the law if

(*a*) a notice is given or published in the manner that the court directs or that may be specified in the rules of the court;

(*b*) the notice specifies a period of 60 days during which a person may make an application to the court asserting their interest in the property; and

(*c*) during that period, no one makes such an application.

When management order ceases to have effect

(8) A management order ceases to have effect when the property that is the subject of the management order is returned in accordance with the law, destroyed or forfeited to Her Majesty.

For greater certainty

(8.1) For greater certainty, if property that is the subject of a management order is sold, the management order applies to the net proceeds of the sale.

Section 462.37

Section 462.37 amended by replacing subsecs. (1) and (2), 2017, c. 7, s. 59(1) (to come into force by order of the Governor in Council):

Order of forfeiture of property

(1) Subject to this section and sections 462.39 to 462.41, if an offender is convicted, or discharged under section 730, of a designated offence and the court imposing sentence on or discharging the offender, on application of the Attorney General, is satisfied, on a balance of probabilities, that any property is proceeds of crime obtained through the commission of the designated offence, the court shall order that the property be forfeited to Her Majesty to be disposed of as the Attorney General directs or otherwise dealt with in accordance with the law.

Proceeds of crime — other offences

(2) If the evidence does not establish to the satisfaction of the court that property in respect of which an order of forfeiture would otherwise be made under subsection (1) was obtained through the commission of the designated offence of which the offender is convicted or discharged, but the court is satisfied, beyond a reasonable doubt, that the property is proceeds of crime, the court may make an order of forfeiture under subsection (1) in relation to that property.

Section 462.38

Subsection 462.38(2) amended by replacing para. (*b*), 2017, c. 7, s. 60(1) (to come into force by order of the Governor in Council):

(*b*) that property was obtained through the commission of a designated offence in respect of which proceedings were commenced, and

Section 462.41

The portion of subsec. 462.41(2) before para. (*c*) replaced, 2017, c. 7, s. 61 (to come into force by order of the Governor in Council):

Manner of giving notice

(2) A notice shall

(*a*) be given in the manner that the court directs or that may be specified in the rules of the court;

(*b*) specify the period that the court considers reasonable or that may be set out in the rules of the court during which a person may make an application to the court asserting their interest in the property; and

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Section 488.01

Section 488.01 enacted to follow s. 488, 2017, c. 22, s. 3:

DEFINITIONS / "data" / "document" / "journalist" / "journalistic source" / "officer" / Warrant, Authorization and Order / Warrant, Authorization and Order / Special Advocate / Offence by Journalist - Exception / Offence by Journalist - Order / Conditions / Powers / Discovery of Relation to Journalist / Powers of Judge.

488.01 (1) The following definitions apply in this section and in section 488.02.

"data" has the same meaning as in section 487.011.

"document" has the same meaning as in section 487.011.

"journalist" has the same meaning as in subsection 39.1(1) of the *Canada Evidence Act*.

"journalistic source" has the same meaning as in subsection 39.1(1) of the *Canada Evidence Act*.

"officer" means a peace officer or public officer.

(2) Despite any other provision of this Act, if an applicant for a warrant under section 487.01, 487.1, 492.1 or 492.2, a search warrant under this Act, notably under section 487, an authorization under section 184.2, 184.3, 186 or 188, or an order under any of sections 487.014 to 487.017 knows that the application relates to a journalist's communications or an object, document or data relating to or in the possession of a journalist, they shall make an application to a judge of a superior court of criminal jurisdiction or to a judge as defined in section 552. That judge has exclusive jurisdiction to dispose of the application.

(3) A judge may issue a warrant, authorization or order under subsection (2) only if, in addition to the conditions required for the issue of the warrant, authorization or order, he or she is satisfied that

- **(*a*) there is no other way by which the information can reasonably be obtained; and**
- **(*b*) the public interest in the investigation and prosecution of a criminal offence outweighs the journalist's right to privacy in gathering and disseminating information.**

(4) The judge to whom the application for the warrant, authorization or order is made may, in his or her discretion, request that a special advocate present observations in the interests of freedom of the press concerning the conditions set out in subsection (3).

(5) Subsections (3) and (4) do not apply in respect of an application for a warrant, authorization or order that is made in relation to the commission of an offence by a journalist.

(6) If a warrant, authorization or order referred to in subsection (2) is sought in relation to the commission of an offence by a journalist and the judge considers it necessary to protect the confidentiality of journalistic sources, the judge may order that some or all documents obtained pursuant to the warrant, authorization or order are to be dealt with in accordance with section 488.02.

(7) The warrant, authorization or order referred to in subsection (2) may contain any conditions that the judge considers appropriate to protect the confidentiality of journalistic sources and to limit the disruption of journalistic activities.

(8) The judge who rules on the application for the warrant, authorization or order referred to in subsection (2) has the same powers, with the necessary adaptations, as the authority who may issue the warrant, authorization or order.

(9) If an officer, acting under a warrant, authorization or order referred to in subsection (2) for which an application was not made in accordance with that subsection, becomes aware that the warrant, authorization or order relates to a journalist's communications or an object, document or data relating to or in the possession of a journalist, the officer shall, as soon as possible, make an *ex parte* application to a judge of a superior court of criminal jurisdiction or a judge as defined in section 552 and, until the judge disposes of the application,

- **(*a*) refrain from examining or reproducing, in whole or in part, any document obtained pursuant to the warrant, authorization or order; and**
- **(*b*) place any document obtained pursuant to the warrant, authorization or order in a sealed packet and keep it in a place to which the public has no access.**

(10) On an application under subsection (9), the judge may

- **(*a*) confirm the warrant, authorization or order if the judge is of the opinion that no additional conditions to protect the confidentiality of journalistic sources and to limit the disruption of journalistic activities should be imposed;**
- **(*b*) vary the warrant, authorization or order to impose any conditions that the judge considers appropriate to protect the confidentiality of journalistic sources and to limit the disruption of journalistic activities;**
- **(*c*) if the judge considers it necessary to protect the confidentiality of journalistic sources, order that some or all documents that were or will be obtained pursuant to the warrant, authorization or order are to be dealt with in accordance with section 488.02; or**
- **(*d*) revoke the warrant, authorization or order if the judge is of the opinion that the applicant knew or ought reasonably to have known that the application for the warrant, authorization or order related to a journalist's communications or an object, document or data relating to or in the possession of a journalist. 2017, c. 22, s. 3.**

Section 488.02

Section 488.02 enacted to follow s. 488.01, 2017, c. 22, s. 3:

DOCUMENTS / Notice / Application / Disclosure: Prohibition / Disclosure Order / Examination / Order.

488.02 (1) Any document obtained pursuant to a warrant, authorization or order issued in accordance with subsection 488.01(3), or that is the subject of an order made under subsection 488.01(6) or paragraph 488.01(10)(*c*), is to be placed in a packet and sealed by the court that issued the warrant, authorization or order and is to be kept in the custody of the court in a place to which the public has no access or in such other place as the judge may authorize and is not to be dealt with except in accordance with this section.

(2) No officer is to examine or reproduce, in whole or in part, a document referred to in subsection (1) without giving the journalist and relevant media outlet notice of his or her intention to examine or reproduce the document.

(3) The journalist or relevant media outlet may, within 10 days of receiving the notice referred to in subsection (2), apply to a judge of the court that issued the warrant, authorization or order to issue an order that the document is not to be disclosed to an officer on the grounds that the document identifies or is likely to identity a journalistic source.

(4) A document that is subject to an application under subsection (3) is to be disclosed to an officer only following a disclosure order in accordance with paragraph (7)(*b*).

(5) The judge may order the disclosure of a document only if he or she is satisfied that

- **(*a*) there is no other way by which the information can reasonably be obtained; and**
- **(*b*) the public interest in the investigation and prosecution of a criminal offence outweighs the journalist's right to privacy in gathering and disseminating information.**

(6) The judge may, if he or she considers it necessary, examine a document to determine whether it should be disclosed.

(7) The judge must,

- **(*a*) if he or she is of the opinion that the document should not be disclosed, order that it be returned to the journalist or the media outlet, as the case may be; or**
- **(*b*) if he or she is of the opinion that the document should be disclosed, order that it be delivered to the officer who gave the notice under subsection (2), subject to such restrictions and conditions as the judge deems appropriate. 2017, c. 22, s. 3.**

Section 490.1

Section 490.1 amended by replacing subsecs. (1) and (2), 2017, c. 7, s. 64 (to come into force by order of the Governor in Council):

Order of forfeiture of property on conviction

(1) Subject to sections 490.3 to 490.41, if a person is convicted, or discharged under section 730, of an indictable offence under this Act or the *Corruption of Foreign Public Officials Act* and, on application of the Attorney General, the court is satisfied, on a balance of probabilities, that offence-related property is related to the commission of the offence, the court shall

(*a*) if the prosecution of the offence was commenced at the instance of the government of a province and conducted by or on behalf of that government, order that the property be forfeited to Her Majesty in right of that province to be disposed of or otherwise dealt with in accordance with the law by the Attorney General or Solicitor General of that province; and

(*b*) in any other case, order that the property be forfeited to Her Majesty in right of Canada to be disposed of or otherwise dealt with in accordance with the law by the member of the Queen's Privy Council for Canada that is designated by the Governor in Council for the purpose of this paragraph.

Property related to other offences

(2) Subject to sections 490.3 to 490.41, if the evidence does not establish to the satisfaction of the court that property in respect of which an order of forfeiture would otherwise be made under subsection (1) is related to the commission of the indictable offence under this Act or the *Corruption of Foreign Public Officials Act* of which a person is convicted or discharged, but the court is satisfied, beyond a reasonable doubt, that the property is offence-related property, the court may make an order of forfeiture under subsection (1) in relation to that property.

Section 490.2

Subsection 490.2(4) amended by replacing paras. (*a*) and (*b*), 2017, c. 7, s. 65 (to come into force by order of the Governor in Council):

(*a*) if the prosecution of the offence was commenced at the instance of the government of a province and conducted by or on behalf of that government, order that the property be forfeited to Her Majesty in right of that province to be disposed of or otherwise dealt with in accordance with the law by the Attorney General or Solicitor General of that province; and

(*b*) in any other case, order that the property be forfeited to Her Majesty in right of Canada to be disposed of or otherwise dealt with in accordance with the law by the member of the Queen's Privy Council for Canada that is designated by the Governor in Council for the purpose of this paragraph.

Section 490.4

The portion of subsec. 490.4(2) before para. (*c*) replaced, 2017, c. 7, s. 66 (to come into force by order of the Governor in Council):

Manner of giving notice

(2) A notice shall

(*a*) be given in the manner that the court directs or that may be specified in the rules of the court;

(*b*) specify the period that the court considers reasonable or that may be set out in the rules of the court during which a person may make an application to the court asserting their interest in the property; and

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Section 490.41

Subsection 490.41(2) amended by replacing paras. (*a*) and (*b*), 2017, c. 7, s. 67 (to come into force by order of the Governor in Council):

(*a*) be given in the manner that the court directs or that may be specified in the rules of the court;

(*b*) specify the period that the court considers reasonable or that may be set out in the rules of the court during which a member of the immediate family who resides in the dwelling-house may make themselves known to the court; and

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Section 490.81

1. Subsection 490.81(3) amended by replacing paras. (*a*) and (*b*) and by enacting para. (*c*), 2017, c. 7, s. 68(1) (to come into force by order of the Governor in Council):

(*a*) the power to make an interlocutory sale of perishable or rapidly depreciating property;

(*b*) the power to destroy, in accordance with subsections (4) to (7), property that has little or no value; and

(*c*) the power to have property, other than real property or a conveyance, forfeited to Her Majesty in accordance with subsection (7.1).

2. Section 490.81 amended by replacing subsecs. (4) and (5), 2017, c. 7, s. 68(2) (to come into force by order of the Governor in Council):

Application for destruction order

(4) Before a person who is appointed to manage property destroys property that has little or no value, they shall apply to a court for a destruction order.

Notice

(5) Before making a destruction order, a court shall require notice in accordance with subsection (6) to be given to and may hear any person who, in the court's opinion, appears to have a valid interest in the property.

3. Subsection 490.81(6) amended by replacing paras. (*a*) and (*b*), 2017, c. 7, s. 68(3) (to come into force by order of the Governor in Council):

(*a*) be given in the manner that the court directs or that may be specified in the rules of the court; and

(*b*) specify the effective period of the notice that the court considers reasonable or that may be set out in the rules of the court.

4. Section 490.81 amended by replacing subsecs. (7) and (8) and by enacting subsecs. (7.1) and (8.1), 2017, c. 7, s. 68(4) (to come into force by order of the Governor in Council):

Destruction Order

(7) A court shall order that the property be destroyed if it is satisfied that the property has little or no financial or other value.

Forfeiture order

(7.1) On application by a person who is appointed to manage the property, a court shall order that the property, other than real property or a conveyance, be forfeited to Her Majesty to be disposed of or otherwise dealt with in accordance with the law if

(*a*) a notice is given or published in the manner that the court directs or that may be specified in the rules of the court;

(*b*) the notice specifies a period of 60 days during which a person may make an application to the court asserting their interest in the property; and

(*c*) during that period, no one makes such an application.

When management order ceases to have effect

(8) A management order ceases to have effect when the property that is the subject of the management order is returned in accordance with the law, destroyed or forfeited to Her Majesty.

For greater certainty

(8.1) For greater certainty, if property that is the subject of a management order is sold, the management order applies to the net proceeds of the sale.

Section 579.001

Section 579.001 enacted, to follow s. 579, 2017, c. 27, s. 62 (to come into force by order of the Governor in Council):

Instruction to stay / Stay / Recommencement / Proceedings deemed never commenced / Definition of "Agreement".

579.001 (1) The Attorney General or counsel instructed by him or her for that purpose shall, at any time after proceedings in relation to an act or omission of a "preclearance officer", as defined in section 5 of the *Preclearance Act, 2016*, are commenced and before judgment, direct the clerk or other proper officer of the court to make an entry on the record that the proceedings are stayed by direction of the Attorney General if

the Government of the United States has provided notice of the exercise of primary criminal jurisdiction under paragraph 14 of Article X of the Agreement.

(2) The clerk or other officer of the court shall make the entry immediately after being so directed, and on the entry being made the proceedings are stayed and any recognizance relating to the proceedings is vacated.

(3) The proceedings may be recommenced without laying a new information or preferring a new indictment, if the Attorney General or counsel instructed by him or her gives notice to the clerk or other officer of the court that

(*a*) the Government of the United States has provided notice of waiver under paragraph 15 of Article X of the Agreement; or

(*b*) the Government of the United States has declined, or is unable, to prosecute the accused and the accused has returned to Canada.

(4) However, if the Attorney General or counsel does not give notice under subsection (3) on or before the first anniversary of the day on which the stay of proceedings was entered, the proceedings are deemed never to have been commenced.

(5) In this section, "Agreement" means the Agreement on Land, Rail, Marine, and Air Transport Preclearance between the Government of Canada and the Government of the United States of America, done at Washington on March 16, 2015.

Section 718.2

Subparagraph 718.2(*a*)(i) replaced, 2017, c. 13, s. 4:

(i) evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or gender identity or expression, or on any other similar factor,

CANADA EVIDENCE ACT

Amended 2017, c. 9, s. 41; June 19, 2017
Amended 2017, c. 22, s. 2; in force on Royal Assent, October 18, 2017

Section 39.1

Section 39.1 enacted to follow s. 39, 2017, c. 22, s. 2:

Journalistic Sources

DEFINITIONS / "document" / "journalistic source" / Objection / Former journalist / Power of court, person or body / Objection of court, person or body / Observations / Authorization / Conditions / Burden of proof / Appeal / Limitation period for appeal / Hearing in summary way.

39.1 (1) The following definitions apply in this section.

"document" has the same meaning as in section 487.011 of the *Criminal Code*.

"journalist" means a person whose main occupation is to contribute directly, either regularly or occasionally, for consideration, to the collection, writing or production of information for dissemination by the media, or anyone who assists such a person.

"journalistic source" means a source that confidentially transmits information to a journalist on the journalist's undertaking not to divulge the identity of the source, whose anonymity is essential to the relationship between the journalist and the source.

(2) Subject to subsection (7), a journalist may object to the disclosure of information or a document before a court, person or body with the authority to compel the disclosure of information on the grounds that the information or document identifies or is likely to identify a journalistic source.

(3) For the purposes of subsections (2) and (7), "journalist" includes an individual who was a journalist when information that identifies or is likely to identify the journalistic source was transmitted to that individual.

(4) The court, person or body may raise the application of subsection (2) on their own initiative.

(5) When an objection or the application of subsection (2) is raised, the court, person or body shall ensure that the information or document is not disclosed other than in accordance with this section.

(6) Before determining the question, the court, person or body must give the parties and interested persons a reasonable opportunity to present observations.

(7) The court, person or body may authorize the disclosure of information or a document only if they consider that

(*a*) the information or document cannot be produced in evidence by any other reasonable means; and

(*b*) the public interest in the administration of justice outweighs the public interest in preserving the confidentiality of the journalistic source, having regard to, among other things,

(i) the importance of the information or document to a central issue in the proceeding,

(ii) freedom of the press, and

(iii) the impact of disclosure on the journalistic source and the journalist.

(8) An authorization under subsection (7) may contain any conditions that the court, person or body considers appropriate to protect the identity of the journalistic source.

(9) A person who requests the disclosure has the burden of proving that the conditions set out in subsection (7) are fulfilled.

(10) An appeal lies from a determination under subsection (7)

(*a*) to the Federal Court of Appeal from a determination of the Federal Court;

(*b*) to the court of appeal of a province from a determination of a superior court of the province;

(*c*) to the Federal Court from a determination of a court, person or body vested with power to compel production by or under an Act of Parliament if the court, person or body is not established under a law of a province; or

(*d*) to the trial division or trial court of the superior court of the province within which the court, person or body exercises its jurisdiction, in any other case.

(11) An appeal under subsection (10) shall be brought within 10 days after the date of the determination appealed from or within any further time that the court having jurisdiction to hear the appeal considers appropriate in the circumstances.

(12) An appeal under subsection (10) shall be heard and determined without delay and in a summary way. 2017, c. 22, s. 2.

Schedule

Item 11 replaced, 2017, c. 9, s. 41:

11. The Federal Public Sector Labour Relations and Employment Board referred to in subsection 4(1) of the *Federal Public Sector Labour Relations and Employment Board Act*, for the purposes of a grievance process under the *Federal Public Sector Labour Relations Act* with respect to an employee of the Canadian Security Intelligence Service, with the exception of any information provided to the Board by the employee

CONTROLLED DRUGS AND SUBSTANCES ACT

Amended 2017, c. 7, ss. 1 to 51; ss. 1(3) to (5), 3(1), (3), (4), 4 to 6, 7(2), (4), 9, 25, 26(1), (3), (4), (5), (6), (7), 27(1), (2), 30, 33, 34, 37, 38, 39, 40(1), (3), (6) to (8), (10) to (12), (14) to (19), 41 to 51 in force May 18, 2017; ss. 1(1) and (6), 2, 8, 10 to 24, 26(8), 28, 29, 31, 32, 35, 36, 40(12) and (13) to come into force by order of the Governor in Council as provided by s. 73

Amended SOR/2017-249, *Can. Gaz.*, *Part II*, December 13, 2017; in force December 13, 2017 as provided by s. 3

Amended SOR/2017-275, *Can. Gaz.*, *Part II*, December 27, 2017; in force December 8, 2017 as provided by s. 2

Amended SOR/2017-277, *Can. Gaz.*, *Part II*, December 27, 2017; in force December 27, 2017 as provided by s. 3

Section 2

1. Subsection 2(1) amended by repealing the definition "adjudicator", 2017, c. 7, s. 1(1) (to come into force by order of the Governor in Council).

"adjudicator" [*Repealed*, 2017, c. 7, s. 1(1).]

2. The portion of the definition "produce" in subsec. 2(2) before para. (*a*) replaced, 2017, c. 7, s. 1(3):

"produce" means, in respect of a substance included in any of Schedules I to V, to obtain the substance by any method or process including

3. The portion of the definition "traffic" in subsec. (2(1) before para. (*a*) replaced, 2017, c. 7, s. 2(1):

"traffic" means, in respect of a substance included in any of Schedules I to V,

4. The following definitions enacted in subsec. 2(1), in alphabetical order, 2017, c. 7, s. 1(5):

"customs office" has the same meaning as in subsection 2(1) of the *Customs Act*;

"designated device" means a device included in Schedule IX;

5. The following definitions enacted in subsec. 2(1), in alphabetical order, 2017, c. 7, s. 1(6) (to come into force by order of the Governor in Council):

"chemical offence-related property" means offence-related property that is a chemical or precursor and includes anything that contains such property or has such property on it;

"non-chemical offence-related property" means offence-related property that is not chemical offence-related property;

Section 3

Subsection 3(2) repealed, 2017, c. 7, s. 2 (to come into force by order of the Governor in Council).

(2) [*Repealed*, 2017, c. 7, s. 2.]

Section 5

1. Subsections 5(1) and (2) replaced, 2017, c. 7, s. 3(1):

5. (1) No person shall traffic in a substance included in Schedule I, II, III, IV or V or in any substance represented or held out by that person to be such a substance.

(2) No person shall, for the purpose of trafficking, possess a substance included in Schedule I, II, III, IV or V.

2. The portion of para. 5(3)(*b*) before subpara. (i) replaced, 2017, c. 7, s. 3(3):

(*b*) **if the subject matter of the offence is a substance included in Schedule III or V,**

3. Subsection 5(5) replaced, 2017, c. 7, s. 3(4):

Interpretation

(5) For the purposes of applying subsection (3) in respect of an offence under subsection (1), a reference to a substance included in Schedule I, II, III, IV or V includes a reference to any substance represented or held out to be a substance included in that Schedule.

Section 6

1. The portion of para. 6(3)(*b*) before subpara. (i) replaced, 2017, c. 7, s. 4(1):

(*b*) **if the subject matter of the offence is a substance included in Schedule III, V or VI,**

2. The portion of para. 6(3)(*c*) subpara. (i) replaced, 2017, c. 7, s. 4(2):

(*c*) **if the subject matter of the offence is a substance included in Schedule IV,**

Section 7

1. Subsection 7(1) replaced, 2017, c. 7, s. 5(1):

Production of substance

7. (1) Except as authorized under the regulations, no person shall produce a substance included in Schedule I, II, III, IV or V.

2. The portion of para. 7(2)(*a*.1) before subpara. (i) replaced, 2017, c. 7, s. 5(2):

(*a*.1) if the subject matter of the offence is a substance included in Schedule II, other than cannabis (marihuana), is guilty of an indictable offence and liable to imprisonment for life, and to a minimum punishment of imprisonment

3. The portion of para. 7(2)(*b*) before subpara. (i) replaced, 2017, c. 7, s. 5(3):

(*b*) if the subject matter of the offence is cannabis (marihuana), is guilty of an indictable offence and liable to imprisonment for a term of not more than 14 years, and to a minimum punishment of

4. The portion of para. 7(2)(*c*) before subpara. (i) replaced, 2017, c. 7, s. 5(4):

(*c*) if the subject matter of the offence is a substance included in Schedule III or V,

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Section 7.1

Section 7.1 replaced, 2017, c. 7, s. 6:

POSSESSION, SALE, ETC., FOR USE IN PRODUCTION OF OR TRAFFICKING IN SUBSTANCE / Punishment.

7.1 (1) No person shall possess, produce, sell, import or transport anything intending that it will be used

(*a*) to produce a controlled substance, unless the production of the controlled substance is lawfully authorized; or

(*b*) to traffic in a controlled substance.

(2) Every person who contravenes subsection (1)

(*a*) if the subject matter of the offence is a substance included in Schedule I, II, III or V,

(i) is guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years, or

(ii) is guilty of an offence punishable on summary conviction and liable to imprisonment for a term of not more than 18 months; and

(*b*) if the subject matter of the offence is a substance included in Schedule IV,

(i) is guilty of an indictable offence and liable to imprisonment for a term of not more than three years, or

(ii) is guilty of an offence punishable on summary conviction and liable to imprisonment for a term of not more than one year. 2011, c. 14, s. 1; 2017, c. 7, s. 6.

Section 10

1. Subparagraphs 10(2)(*a*)(iii) and (iv) replaced, 2017, c. 7, s. 7(2):

(iii) trafficked in a substance included in Schedule I, II, III, IV or V, or possessed such a substance for the purpose of trafficking, in or near a school, on or near school grounds or in or near any other public place usually frequented by persons under the age of 18 years, or

(iv) trafficked in a substance included in Schedule I, II, III, IV or V, or possessed such a substance for the purpose of trafficking, to a person under the age of 18 years;

2. Paragraph 10(2)(*c*) replaced, 2017, c. 7, s. 7(4):

(*c*) used the services of a person under the age of eighteen years to commit, or involved such a person in the commission of, the offence.

Section 11

1. The heading "Search, Seizure and Detention" before s. 11 repealed, 2017, c. 7, s. 8 (to come into force by order of the Governor in Council).

2. Subsection 11(4) replaced, 2017, c. 7, s. 9:

Effect of endorsement

(4) An endorsement that is made on a warrant as provided for in subsection (3) is sufficient authority to anyvpeace officer to whom it was originally directed and to all peace officers within the jurisdiction of the justice by whom it is endorsed to execute the warrant and to dispose of or otherwise deal with the things seized in accordance with the law.

Section 12.1

Section 12.1 enacted, 2017, c. 7, s. 10 (to come into force by order of the Governor in Council):

Report of seizure, finding, etc.

12.1 Subject to the regulations, every peace officer, inspector or prescribed person who seizes, finds or otherwise acquires a controlled substance, precursor or chemical offence-related property shall, within 30 days,

(*a*) prepare a report setting out

(i) the substance, precursor or property,

(ii) the amount of it that was seized, found or acquired,

(iii) the place where it was seized, found or acquired,

(iv) the date on which it was seized, found or acquired,

(v) the name of the police force, agency or entity to which the peace officer, inspector or prescribed person belongs,

(vi) the number of the file or police report related to the seizure, finding or acquisition, and

(vii) any other prescribed information;

(*b*) cause the report to be sent to the Minister; and

(*c*) in the case of a seizure made under section 11 of this Act, the *Criminal Code* or a power of seizure at common law, cause a copy of the report to be filed with the justice who issued the warrant or another justice for the same territorial division or, if a warrant was not issued, a justice who would have had jurisdiction to issue a warrant.

Section 13

Section 13 amended by replacing subsecs. (2) to (4) and by repealing subsecs. (5) and (6), 2017, c. 7, s. 11 (to come into force by order of the Governor in Council):

Sections 489.1 and 490 of *Criminal Code* applicable

(2) If a thing seized under this Act is non-chemical offence-related property, sections 489.1 and 490 of the *Criminal Code* apply subject to sections 16 to 22 and subsections 31(6) to (9) of this Act.

Provisions of this Act applicable

(3) A judge shall order that the property be destroyed if they are satisfied that the property has little or no financial or other value.

Recognizance

(4) On application by a person who is appointed to manage the property, a judge of the Federal Court shall order that the property, other than real property or a conveyance, be forfeited to Her Majesty to be disposed of or otherwise dealt with in accordance with the law if

(5) [*Repealed*, 2017, c. 7, s. 11.]

(6) [*Repealed*, 2017, c. 7, s. 11.]

Section 14

1. The heading before s. 14 replaced, 2017, c. 7, s. 12 (to come into force by order of the Governor in Council):

Division 1

Non-chemical Offence-related Property

2. Subsection 14 amended by replacing subsec. (1), 2017, c. 7, s. 13(1) (to come into force by order of the Governor in Council):

Application for restraint order

14. (1) The Attorney General may make an application in accordance with this section for a restraint order in respect of any non-chemical offence-related property.

3. Subsection 14 amended by replacing subsec. (2), 2017, c. 7, s. 13(2), (3) (to come into force by order of the Governor in Council):

Procedure

(2) The application for a restraint order may be made *ex parte* and shall be made in writing to a judge and be accompanied by an affidavit of the Attorney General or any other person deposing to the following matters

(*a*) the offence to which the property relates;

(*b*) the person who is believed to be in possession of the property; and

(*c*) a description of the property.

4. Subsection 14 amended by replacing subsec. (3), 2017, c. 7, s. 13(4) (to come into force by order of the Governor in Council):

Restraint order

(3) The judge to whom the application is made may, if satisfied that there are reasonable grounds to believe that the property is non-chemical offence-related property, make a restraint order prohibiting any person from disposing of, or otherwise dealing with any interest in, the property specified in the order other than in the manner that is specified in the order.

Section 14.1

Section 14.1 repealed, 2017, c. 7, s. 14 (to come into force by order of the Governor in Council).

Sections 15 and 15.1

Section 15 replaced and s. 15.1 enacted, 2017, c. 7, s. 14 (to come into force by order of the Governor in Council):

Sections 489.1 and 490 of *Criminal Code* applicable

15. (1) Subject to sections 16 to 22, sections 489.1 and 490 of the *Criminal Code* apply, with any modifications that the circumstances require, to any property that is the subject of a restraint order made under section 14.

Recognizance

(2) If, under this section, an order is made in accordance with paragraph 490(9)(*c*) of the *Criminal Code* for the return of any property that is the subject of a restraint order made under section 14, the judge or justice making the order may require the applicant for the order to enter into a recognizance before the judge or justice, with or without

sureties, in the amount and with any conditions that the judge or justice directs and, if the judge or justice considers it appropriate, require the applicant to deposit with the judge or justice the sum of money or other valuable security that the judge or justice directs.

Management order

15.1 (1) On application of the Attorney General or of any other person with the written consent of the Attorney General, a justice in the case of non-chemical offence-related property seized under section 11 of this Act, the *Criminal Code* or a power of seizure at common law, or a judge in the case of property restrained under section 14, may, if they are of the opinion that the circumstances so require,

(*a*) appoint a person to take control of and to manage or otherwise deal with all or part of the property in accordance with the directions of the judge or justice; and

(*b*) require any person having possession of that property to give possession of the property to the person appointed under paragraph (*a*).

Appointment of Minister of Public Works and Government Services

(2) If the Attorney General of Canada so requests, a judge or justice appointing a person under subsection (1) shall appoint the Minister of Public Works and Government Services.

Power to manage

(3) The power to manage or otherwise deal with property under subsection (1) includes

(*a*) the power to make an interlocutory sale of perishable or rapidly depreciating property;

(*b*) the power to destroy, in accordance with subsections (4) to (7), property that has little or no value; and

(*c*) the power to have property, other than real property or a conveyance, forfeited to Her Majesty in accordance with subsection (8).

Application for destruction order

(4) Before a person who is appointed to manage property destroys property that has little or no value, they shall apply to a court for a destruction order.

Notice required before destruction

(5) Before making a destruction order, a court shall require notice in accordance with subsection (6) to be given to and may hear any person who, in the court's opinion, appears to have a valid interest in the property.

Manner of giving notice

(6) A notice shall

(*a*) be given in the manner that the court directs or that may be specified in the rules of the court; and

(*b*) specify the effective period of the notice that the court considers reasonable or that may be set out in the rules of the court.

Destruction order

(7) A court shall order that the property be destroyed if it is satisfied that the property has little or no financial or other value.

Application for forfeiture order

(8) On application by a person who is appointed to manage the property, a court shall order that the property, other than real property or a conveyance, be forfeited to Her Majesty to be disposed of or otherwise dealt with in accordance with the law if

(*a*) a notice is given or published in the manner that the court directs or that may be specified in the rules of the court;

(*b*) the notice specifies a period of 60 days during which a person may make an application to the court asserting their interest in the property; and

(*c*) during that period, no one makes such an application.

When management order ceases to have effect

(9) A management order ceases to have effect when the property that is the subject of the management order is returned in accordance with the law, destroyed or forfeited to Her Majesty.

For greater certainty

(10) For greater certainty, if property that is the subject of a management order is sold, the management order applies to the net proceeds of the sale.

Application to vary conditions

(11) The Attorney General may at any time apply to the judge or justice to cancel or vary any condition to which a management order is subject but may not apply to vary an appointment made under subsection (2).

Section 16

1. The heading before s. 16 replaced, 2017, c. 7, s. 15 (to come into force by order of the Governor in Council):

Forfeiture

2. Section 16 amended by replacing subsecs. (1) and (2), 2017, c. 7, s. 16(1) (to come into force by order of the Governor in Council):

Forfeiture of property

(1) Subject to sections 18 to 19.1, if a person is convicted, or discharged under section 730 of the *Criminal Code*, of a designated substance offence and, on application of the Attorney General, the court is satisfied, on a balance of probabilities, that non-chemical offence-related property is related to the commission of the offence, the court shall

(*a*) if the prosecution of the offence was commenced at the instance of the government of a province and conducted by or on behalf of that government,

order that the property be forfeited to Her Majesty in right of that province to be disposed of or otherwise dealt with in accordance with the law by the Attorney General or Solicitor General of that province; and

(*b*) in any other case, order that the property be forfeited to Her Majesty in right of Canada to be disposed of or otherwise dealt with in accordance with the law by the member of the Queen's Privy Council for Canada that is designated by the Governor in Council for the purposes of this paragraph.

Property related to other offences

(2) Subject to sections 18 to 19.1, if the evidence does not establish to the satisfaction of the court that property in respect of which an order of forfeiture would otherwise be made under subsection (1) is related to the commission of the designated substance offence of which a person is convicted or discharged, but the court is satisfied, beyond a reasonable doubt, that the property is non-chemical offence-related property, the court may make an order of forfeiture under subsection (1) in relation to that property.

3. Section 16 amended by replacing subsec. (3), 2017, c. 7, s. 16(2) (to come into force by order of the Governor in Council):

Appeal

(3) A person who has been convicted or discharged of a designated substance offence or the Attorney General may appeal to the court of appeal from an order or a failure to make an order under subsection (1) as if the appeal were an appeal against the sentence imposed on the person in respect of the offence.

Section 17

1. Subsection 17(2) amended by replacing paras. (*a*) and (*b*), 2017, c. 7, s. 17(1) (to come into force by order of the Governor in Council):

(*a*) beyond a reasonable doubt that any property is non-chemical offence-related property,

(*b*) that proceedings were commenced in respect of a designated substance offence to which the property referred to in paragraph (*a*) is related, and

2. Section 17 amended by replacing subsec. (4), 2017, c. 7, s. 17(2) (to come into force by order of the Governor in Council):

Who may dispose of forfeited property

(4) For the purposes of subsection (2),

(*a*) if the proceedings referred to in paragraph (2)(*b*) were commenced at the instance of the government of a province, the judge shall order that the property be forfeited to Her Majesty in right of that province and disposed of or otherwise dealt with in accordance with the law by the Attorney General or Solicitor General of that province, and

(*b*) in any other case, the judge shall order that the property be forfeited to Her Majesty in right of Canada and disposed of or otherwise dealt with in

accordance with the law by the member of the Queen's Privy Council for Canada that is designated by the Governor in Council for the purposes of this paragraph.

Section 18

Section 18 amended, 2017, c. 7, s. 18 (to come into force by order of the Governor in Council):

Voidable transfers

18. A court may, before ordering that property be forfeited under subsection 16(1) or 17(2), set aside any conveyance or transfer of the property that occurred after the property was seized or restrained, unless the conveyance or transfer was for valuable consideration to a person acting in good faith.

Section 19

The portion of subsec. 19(2) before para. (*c*) replaced, 2017, c. 7, s. 19 (to come into force by order of the Governor in Council):

Manner of giving notice

(2) A notice shall

(*a*) be given in the manner that the court directs or that may be specified in the rules of the court;

(*b*) specify the period that the court considers reasonable or that may be set out in the rules of the court during which a person may make an application to the court asserting their interest in the property; and

Section 19.1

1. Section 19.1 amended by replacing subsec. (1), 2017, c. 7, s. 20(1) (to come into force by order of the Governor in Council):

Notice

19.1 (1) If all or part of the property that would otherwise be forfeited under subsection 16(1) or 17(2) is a dwelling-house, before making an order of forfeiture, a court shall require notice in accordance with subsection (2) to be given to and may hear any person who resides in the dwelling-house and is a member of the immediate family of the person charged with or convicted, or discharged under section 730 of the *Criminal Code*, of the indictable offence under this Act in relation to which the property would be forfeited.

2. Subsection 19.1(2) amended by replacing paras. (*a*) and (*b*), 2017, c. 7, s. 20(2) (to come into force by order of the Governor in Council):

(*a*) be given in the manner that the court directs or that may be specified in the rules of the court;

(*b*) specify the period that the court considers reasonable or that may be set out in the rules of the court during which a member of the immediate family who resides in the dwelling-house may make themselves known to the court; and

3. Section 19.1 amended by replacing subsec. (3), 2017, c. 7, s. 20(3) (to come into force by order of the Governor in Council):

Non-forfeiture of real property

(3) Subject to an order made under subsection 19(3), if a court is satisfied that the impact of an order of forfeiture made under subsection 16(1) or 17(2) in respect of real property would be disproportionate to the nature and gravity of the offence, the circumstances surrounding the commission of the offence and the criminal record, if any, of the person charged with or convicted, or discharged under section 730 of the *Criminal Code*, of the offence, as the case may be, it may decide not to order the forfeiture of the property or part of the property and may revoke any restraint order made in respect of that property or part.

4. Subsection 19.1(4) amended by replacing para. (*a*), 2017, c. 7, s. 20(4) (to come into force by order of the Governor in Council):

(*a*) the impact of an order of forfeiture on any member of the immediate family of the person charged with or convicted or discharged of the offence, if the dwelling-house was the member's principal residence at the time the charge was laid and continues to be the member's principal residence, and

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Section 20

The portion of subsec. 20(1) before para. (*b*) replaced, 2017, c. 7, s. 21 (to come into force by order of the Governor in Council):

Application

(1) If any property is forfeited to Her Majesty under an order made under subsection 16(1) or 17(2), any person who claims an interest in the property, other than

(*a*) in the case of property forfeited under an order made under subsection 16(1), a person who was convicted, or discharged under section 730 of the *Criminal Code*, of the designated substance offence in relation to which the property was forfeited;

Sections 23 to 26

Note: The headings before s. 24 and ss. 24 to 26 replaced and s. 23 enacted, 2017, c. 7, s. 22 (to come into force by order of the Governor in Council):

Controlled Substances, Precursors and Chemical Offence-related Property

Return

23. (1) A peace officer, inspector or prescribed person who seizes, finds or otherwise acquires a controlled substance, precursor or chemical offence-related property may return it to the person who is its lawful owner or who is lawfully entitled to its possession if the peace officer, inspector or prescribed person is satisfied

(*a*) that there is no dispute as to who is the lawful owner or is lawfully entitled to possession of the substance, precursor or property; and

(*b*) that the continued detention of the substance, precursor or property is not required for the purposes of a preliminary inquiry, trial or other proceeding under this Act or any other Act of Parliament.

Receipt

(2) When the substance, precursor or property is returned, the peace officer, inspector or prescribed person shall obtain a receipt for it.

Report by peace officer

(3) In the case of a seizure made under section 11 of this Act, the *Criminal Code* or a power of seizure at common law, the peace officer shall make a report about the return to the justice who issued the warrant or another justice for the same territorial division or, if a warrant was not issued, a justice who would have had jurisdiction to issue a warrant.

Application for return

24. (1) If a controlled substance, precursor or chemical offence-related property has been seized, found or otherwise acquired by a peace officer, inspector or prescribed person, any person may, within 60 days after the date of the seizure, finding or acquisition, on prior notification being given to the Attorney General in the prescribed manner, apply, by notice in writing to a justice in the jurisdiction in which it is being detained, for an order to return it to the person.

Order to return as soon as practicable

(2) If, on the hearing of an application made under subsection (1), a justice is satisfied that an applicant is the lawful owner or is lawfully entitled to possession of the substance, precursor or property and the Attorney General does not indicate that it or a portion of it may be required for the purposes of a preliminary inquiry, trial or other proceeding under this Act or any other Act of Parliament, the justice shall, subject to subsection (5), order that it or the portion be returned as soon as practicable to the applicant.

Order to return at specified time

(3) If, on the hearing of an application made under subsection (1), a justice is satisfied that an applicant is the lawful owner or is lawfully entitled to possession of the

substance, precursor or property but the Attorney General indicates that it or a portion of it may be required for the purposes of a preliminary inquiry, trial or other proceeding under this Act or any other Act of Parliament, the justice shall, subject to subsection (5), order that it or the portion be returned to the applicant

(*a*) on the expiry of 180 days after the day on which the application was made, if no proceeding in relation to it has been commenced before that time; or

(*b*) on the final conclusion of the proceeding or any other proceeding in relation to it, if the applicant is not found guilty in those proceedings of an offence committed in relation to it.

Forfeiture order

(4) If, on the hearing of an application made under subsection (1), a justice is not satisfied that an applicant is the lawful owner or is lawfully entitled to possession of the substance, precursor or property, and it or a portion of it is not required for the purposes of a preliminary inquiry, trial or other proceeding under this Act or any other Act of Parliament, the justice shall order that it or the portion be forfeited to Her Majesty to be disposed of or otherwise dealt with in accordance with the regulations or, if there are no applicable regulations, in the manner that the Minister directs.

Payment of compensation in lieu

(5) If, on the hearing of an application made under subsection (1), a justice is satisfied that an applicant is the lawful owner or is lawfully entitled to possession of the substance, precursor or property, but it was disposed of or otherwise dealt with under section 26, the justice shall order that an amount equal to its value be paid to the applicant.

Forfeiture if no application

25. If no application for the return of a controlled substance, precursor or chemical offence-related property has been made under subsection 24(1) within 60 days after the date of the seizure, finding or acquisition by a peace officer, inspector or prescribed person and it or a portion of it is not required for the purposes of a preliminary inquiry, trial or other proceeding under this Act or any other Act of Parliament, it or the portion is forfeited to Her Majesty and may be disposed of or otherwise dealt with in accordance with the regulations or, if there are no applicable regulations, in the manner that the Minister directs.

Expedited disposition

26. If a precursor or chemical offence-related property - whose storage or handling poses a risk to health or safety - or a controlled substance, or a portion of any of them, is not required for the purposes of a preliminary inquiry, trial or other proceeding under this Act or any other Act of Parliament, it or the portion may be disposed of or otherwise dealt with by the Minister, a peace officer or a prescribed person in accordance with the regulations or, if there are no applicable regulations, in the manner that the Minister directs.

Section 27

1. The portion of s. 27 before para. (*a*) replaced, 2017, c. 7, s. 23(1) (to come into force by order of the Governor in Council):

Disposition following proceedings

27. Subject to section 24, if, in a preliminary inquiry, trial or other proceeding under this Act or any other Act of Parliament, the court before which the proceedings have been brought is satisfied that any controlled substance, precursor or chemical offence-related property that is the subject of proceedings before the court is no longer required by that court or any other court, the court

2. Section 27 amended by replacing subparas. (i) and (ii), 2017, c. 7, s. 23(2) (to come into force by order of the Governor in Council):

(i) if it is satisfied that the person from whom the substance, precursor or property was seized came into possession of it lawfully and continued to deal with it lawfully, order that it be returned to the person, or

(ii) if it is satisfied that possession of the substance, precursor or property by the person from whom it was seized is unlawful and the person who is the lawful owner or is lawfully entitled to its possession is known, order that it be returned to the person who is the lawful owner or is lawfully entitled to its possession; and

3. Section 27 amended by replacing para. (*b*), 2017, c. 7, s. 23(3) (to come into force by order of the Governor in Council):

(*b*) may, if it is not satisfied that the substance, precursor or property should be returned under subparagraph (*a*)(i) or (ii) or if possession of it by the person from whom it was seized is unlawful and the person who is the lawful owner or is lawfully entitled to its possession is not known, order that it be forfeited to Her Majesty to be disposed of or otherwise dealt with in accordance with the regulations or, if there are no applicable regulations, in the manner that the Minister directs.

Sections 28 and 29

Sections 28 and 29 replaced, 2017, c. 7, s. 24 (to come into force by order of the Governor in Council):

Disposition with consent

28. If a controlled substance, precursor or chemical offence-related property has been seized, found or otherwise acquired by a peace officer, inspector or prescribed person and it or a portion of it is not required for the purposes of a preliminary inquiry, trial or other proceeding under this Act or any other Act of Parliament, the person who is its lawful owner may consent to its disposition, and when that consent is given, it or the portion is forfeited to Her Majesty and may be disposed of or otherwise dealt with in

accordance with the regulations or, if there are no applicable regulations, in the manner that the Minister directs.

Report of disposition

29. (1) Subject to the regulations, every peace officer, inspector or prescribed person who disposes of or otherwise deals with a controlled substance, precursor or chemical offence-related property under this Division shall, within 30 days, prepare a report setting out the following information and cause the report to be sent to the Minister:

(*a*) the substance, precursor or property;
(*b*) the amount of it that was disposed of or otherwise dealt with;
(*c*) the manner in which it was disposed of or otherwise dealt with;
(*d*) the date on which it was disposed of or otherwise dealt with;
(*e*) the name of the police force, agency or entity to which the peace officer, inspector or prescribed person belongs;
(*f*) the number of the file or police report related to the disposition of it or other dealing with it; and
(*g*) any other prescribed information.

Interpretation

(2) For the purposes of subsection (1), dealing with a controlled substance, precursor or chemical offence-related property by a peace officer includes using it to conduct an investigation or for training purposes.

Section 30

Subsection 30(2) replaced, 2017, c. 7, s. 25:

Certificate

(2) Every inspector shall be provided with a certificate of designation in a form established by the Minister and, on entering any place under subsection 31(1), shall, on request, produce the certificate to the person in charge of the place.

Section 31

1. The portion of subsec. 31(1) before para. (*b*) replaced, 2017, c. 7, s. 26(1):

Powers of inspector

31. (1) Subject to subsection (2), an inspector may, for a purpose related to verifying compliance or preventing non-compliance with the provisions of this Act or the regulations, enter any place, including a conveyance, referred to in subsection (1.1) and may for that purpose

(*a*) open and examine any receptacle or package found in that place in which a controlled substance, precursor or designated device may be found;

2. Paragraph 31(1)(*c*) replaced, 2017, c. 7, s. 26(3):

(*c*) **examine any labels or advertising material or records, books, electronic data or other documents found in that place with respect to any controlled substance, precursor, or designated device other than the records of the medical condition of persons, and make copies thereof or take extracts therefrom;**

3. Subsection 31(1) amended by adding the following after para. (*g*), 2017, c. 7, s. 26(4):

(*g. 1*) **take photographs and make recordings and sketches;**

4. Subsection 31(1) amended by striking out "and" at the end of para. (*h*) and by replacing para. (*i*), 2017, c. 7, s. 26(5):

(*i*) **seize and detain, in accordance with this Part, any controlled substance, precursor, designated device or conveyance found in that place the seizure and detention of which the inspector believes on reasonable grounds are necessary;**

(*j*) **order the owner or person having possession, care or control of any controlled substance, precursor, designated device or other thing to which the provisions of this Act or the regulations apply that is found in that place to move it or, for any time that may be necessary, not to move it or to restrict its movement;**

(*k*) **order the owner or person having possession, care or control of any conveyance that is found in that place and that the inspector believes on reasonable grounds contains a controlled substance, precursor or designated device to stop the conveyance, to move it or, for any time that may be necessary, not to move it or to restrict its movement;**

(*l*) **order any person in that place to establish their identity to the inspector's satisfaction; and**

(*m*) **order a person who, at that place, conducts an activity to which the provisions of this Act or the regulations apply to stop or start the activity.**

5. Subsections 31(1.1) to (3) replaced, 2017, c. 7, s. 26(6):

Place

(1.1) For the purposes of subsection (1), the inspector may only enter a place in which they believe on reasonable grounds

(*a*) **a controlled substance, precursor, designated device or document relating to the administration of this Act or the regulations is located;**

(*b*) **an activity could be conducted under a licence, permit, authorization or exemption that is under consideration by the Minister;**

(*c*) **an activity to which the provisions of this Act or the regulations apply is being conducted; or**

(*d*) **an activity was being conducted under a licence, permit, authorization or exemption before the expiry or revocation of the licence, permit, authorization or exemption, in which case the inspector may enter the**

place only within 45 days after the day on which it expired or was revoked.

Means of telecommunication

(1.2) For the purposes of subsections (1) and (1.1), an inspector is considered to have entered a place when they access it remotely by a means of telecommunication.

Limitation — access by means of telecommunication

(1.3) An inspector who enters remotely, by a means of telecommunication, a place that is not accessible to the public must do so with the knowledge of the owner or person in charge of the place and only for the period necessary for any purpose referred to in subsection (1).

Person accompanying inspector

(1.4) An inspector may be accompanied by any other person that the inspector believes is necessary to help them exercise their powers or perform their duties or functions under this section.

Entering private property

(1.5) An inspector and any person accompanying them may enter and pass through private property, other than a dwelling-house on that property, in order to gain entry to a place referred to in subsection (1.1).

Warrant to enter dwelling-house

(2) In the case of a dwelling-house, an inspector may enter it only with the consent of an occupant or under the authority of a warrant issued under subsection (3).

Authority to issue warrant

(3) A justice may, on *ex parte* application, issue a warrant authorizing the inspector named in it to enter a place and exercise any of the powers mentioned in paragraphs (1)(*a*) to (*m*), subject to any conditions that are specified in the warrant, if the justice is satisfied by information on oath that

- **(*a*) the place is a dwelling-house but otherwise meets the conditions for entry described in subsections (1) and (1.1);**
- **(*b*) entry to the dwelling-house is necessary for the purpose of verifying compliance or preventing non-compliance with the provisions of this Act or the regulations; and**
- **(*c*) entry to the dwelling-house has been refused or there are reasonable grounds to believe that entry will be refused.**

6. Subsections 31(5) to (9) replaced, 2017, c. 7, s. 26(7):

Assistance to inspector

(5) The owner or other person in charge of a place entered by an inspector and every person found there shall give the inspector all reasonable assistance in that person's power and provide the inspector with any information that the inspector may reasonably require.

Storage

(6) Anything that is seized and detained by an inspector under this section may, at the inspector's discretion, be kept or stored at the place where it was seized or, at the inspector's direction, be removed to any other proper place.

Notice

(7) An inspector who seizes anything under this section shall take any measures that are reasonable in the circumstances to give to the owner or other person in charge of the place where the seizure occurred notice of the seizure and of the location where the thing is being kept or stored.

Return by inspector

(8) If an inspector determines that to verify compliance or prevent non-compliance with the provisions of this Act or the regulations it is no longer necessary to detain anything seized by the inspector under this section, the inspector shall notify in writing the owner or other person in charge of the place where the seizure occurred of that determination and, on being issued a receipt for it, shall return the thing to that person.

Return or disposition by Minister

(9) Despite sections 24, 25 and 27, if a period of 120 days has elapsed after the date of a seizure under this section and the thing has not been returned in accordance with subsection (8), it shall be returned, disposed of or otherwise dealt with in accordance with the regulations or, if there are no applicable regulations, in the manner that the Minister directs.

7. Section 31 amended by replacing subsec. (9), 2017, c. 7, s. 26(8) (to come into force by order of the Governor in Council):

Return or disposition by Minister

(9) If a period of 120 days has elapsed after the date of a seizure under this section and the thing has not been returned, disposed of or otherwise dealt with in accordance with subsection (8) or any of sections 24 to 27, it shall be returned, disposed of or otherwise dealt with in accordance with the regulations or, if there are no applicable regulations, in the manner that the Minister directs.

Section 32

1. Subsection 32(1) replaced, 2017, c. 7, s. 27(1):

Obstructing inspector

32. (1) No person shall, by act or omission, obstruct an inspector who is engaged in the exercise of their powers or the performance of their duties or functions under this Act or the regulations.

2. Subsection 32(2) replaced, 2017, c. 7, s. 32(2):

False statements

(2) No person shall knowingly make any false or misleading statement verbally or in writing to an inspector who is engaged in the exercise of their powers or the performance of their duties or functions under this Act or the regulations.

Part V

Note: Part V replaced, 2017, c. 7, s. 28 (to come into force by order of the Governor in Council):

Administrative Monetary Penalties

Violation

Commission of violation.

33. Every person who contravenes a provision designated by regulations made under paragraph 34(1)(*a*), or contravenes an order made under section 45.1 or 45.2 or reviewed under section 45.4, commits a violation and is liable to the penalty established in accordance with the provisions of this Act and the regulations.

Powers of the Governor in Council and the Minister

Regulations

34. (1) The Governor in Council may make regulations

(*a*) designating as a violation that may be proceeded with in accordance with this Act the contravention of any specified provision of this Act — except a provision of Part I — or the regulations;

(*b*) fixing a penalty, or a range of penalties, in respect of each violation;

(*c*) classifying each violation as a minor violation, a serious violation or a very serious violation; and

(*d*) respecting the circumstances under which, the criteria by which and the manner in which a penalty may be increased or reduced, including a reduction in the amount that is provided for in a compliance agreement.

Maximum penalty

(2) The maximum penalty for a violation is $30,000.

Criteria for penalty.

35. Unless a penalty is fixed under paragraph 34(1)(*b*), the amount of a penalty shall, in each case, be determined taking into account

(*a*) the history of compliance with the provisions of this Act or the regulations by the person who committed the violation;

(*b*) the harm to public health or safety that resulted or could have resulted from the violation;

(*c*) whether the person made reasonable efforts to mitigate or reverse the violation's effects;
(*d*) whether the person derived any competitive or economic benefit from the violation; and
(*e*) any other prescribed criteria.

Notices of violation

36. The Minister may
(*a*) designate individuals, or classes of individuals, who are authorized to issue notices of violation; and
(*b*) establish, in respect of each violation, a short-form description to be used in notices of violation.

Proceedings

Issuance of notice of violation

37. (1) If a person who is designated under paragraph 36(*a*) believes on reasonable grounds that a person has committed a violation, the designated person may issue, and shall provide the person with, a notice of violation that
(*a*) sets out the person's name;
(*b*) identifies the alleged violation;
(*c*) sets out the penalty for the violation that the person is liable to pay; and
(*d*) sets out the particulars concerning the time and manner of payment.

Summary of rights

(2) A notice of violation shall clearly summarize, in plain language, the named person's rights and obligations under this section and sections 38 to 43.7, including the right to have the acts or omissions that constitute the alleged violation or the amount of the penalty reviewed and the procedure for requesting that review.

Penalties

Payment

38. (1) If the person named in the notice pays, in the prescribed time and manner, the amount of the penalty,
(*a*) they are deemed to have committed the violation in respect of which the amount is paid;
(*b*) the Minister shall accept that amount as complete satisfaction of the penalty; and
(*c*) the proceedings commenced in respect of the violation under section 37 are ended.

Alternatives to payment

(2) Instead of paying the penalty set out in a notice of violation, the person named in the notice may, in the prescribed time and manner,

(*a*) if the penalty is $5,000 or more, request to enter into a compliance agreement with the Minister that ensures the person's compliance with the order or the provision to which the violation relates; or

(*b*) request a review by the Minister of the acts or omissions that constitute the alleged violation or the amount of the penalty.

Deeming

(3) If the person named in the notice of violation does not pay the penalty in the prescribed time and manner and does not exercise any right referred to in subsection (2) in the prescribed time and manner, they are deemed to have committed the violation identified in the notice.

Compliance Agreements

Compliance agreements

39. (1) After considering a request under paragraph 38(2)(*a*), the Minister may enter into a compliance agreement, as described in that paragraph, with the person making the request on any terms and conditions that are satisfactory to the Minister. The terms and conditions may

(*a*) include a provision for the giving of reasonable security, in a form and in an amount satisfactory to the Minister, as a guarantee that the person will comply with the compliance agreement; and

(*b*) provide for the reduction, in whole or in part, of the penalty for the violation.

Deeming

(2) A person who enters into a compliance agreement with the Minister is, on doing so, deemed to have committed the violation in respect of which the compliance agreement was entered into.

Notice of compliance

(3) If the Minister is satisfied that a person who has entered into a compliance agreement has complied with it, the Minister shall cause a notice to that effect to be provided to the person, at which time

(*a*) the proceedings commenced in respect of the violation under section 37 are ended; and

(*b*) any security given by the person under the compliance agreement shall be returned to the person.

Notice of default

(4) If the Minister is of the opinion that a person who has entered into a compliance agreement has not complied with it, the Minister shall cause a notice of default to be provided to the person to the effect that

(*a*) instead of the penalty set out in the notice of violation in respect of which the compliance agreement was entered into, the person is liable to pay, in the prescribed time and manner, twice the amount of that penalty, and, for greater certainty, subsection 34(2) does not apply in respect of that amount; or

(*b*) the security, if any, given by the person under the compliance agreement shall be forfeited to Her Majesty in right of Canada.

Effect of notice of default

(5) Once provided with the notice of default, the person may not deduct from the amount set out in the notice any amount that they spent under the compliance agreement and

(*a*) the person is liable to pay the amount set out in the notice; or

(*b*) if the notice provides for the forfeiture of the security given under the compliance agreement, that security is forfeited to Her Majesty in right of Canada and the proceedings commenced in respect of the violation under section 37 are ended.

Effect of payment

(6) If a person pays the amount set out in the notice of default in the prescribed time and manner,

(*a*) the Minister shall accept the amount as complete satisfaction of the amount owing; and

(*b*) the proceedings commenced in respect of the violation under section 37 are ended.

Refusal to enter into compliance agreement

40. (1) If the Minister refuses to enter into a compliance agreement requested under paragraph 38(2)(*a*), the person who made the request is liable to pay the amount of the penalty in the prescribed time and manner.

Effect of payment

(2) If a person pays the amount referred to in subsection (1),

(*a*) they are deemed to have committed the violation in respect of which the payment is made;

(*b*) the Minister shall accept the amount as complete satisfaction of the penalty; and

(*c*) the proceedings commenced in respect of the violation under section 37 are ended.

Deeming

(3) If a person does not pay the amount referred to in subsection (1) in the prescribed time and manner, they are deemed to have committed the violation identified in the notice of violation.

Review by the Minister

Review — facts

41. (1) On completion of a review requested under paragraph 38(2)(*b*) with respect to the acts or omissions that constitute the alleged violation, the Minister shall determine whether the person who requested the review committed the violation. If the Minister determines that the person committed the violation but that the amount of the penalty

was not established in accordance with the provisions of this Act and the regulations, the Minister shall correct the amount.

Violation not committed — effect

(2) If the Minister determines under subsection (1) that the person who requested the review did not commit the violation, the proceedings commenced in respect of it under section 37 are ended.

Review — penalty

(3) On completion of a review requested under paragraph 38(2)(*b*) with respect to the amount of the penalty, the Minister shall determine whether the amount of the penalty was established in accordance with the provisions of this Act and the regulations and, if not, the Minister shall correct the amount.

Notice of decision

(4) The Minister shall cause a notice of any decision made under subsection (1) or (3) to be provided to the person who requested the review.

Payment

(5) The person is liable to pay, in the prescribed time and manner, the amount of the penalty that is confirmed or corrected in the Minister's decision made under subsection (1) or (3).

Effect of payment

(6) If a person pays the amount referred to in subsection (5),

(*a*) the Minister shall accept the amount as complete satisfaction of the penalty; and

(*b*) the proceedings commenced in respect of the violation under section 37 are ended.

Written evidence and submissions

(7) The Minister shall consider only written evidence and written submissions in determining whether a person committed a violation or whether the amount of a penalty was established in accordance with the provisions of this Act and the regulations.

Enforcement

Debts to Her Majesty

42. (1) The following amounts constitute debts due to Her Majesty in right of Canada that may be recovered in the Federal Court:

(*a*) the amount of a penalty, from the time the notice of violation setting out the penalty is provided;

(*b*) every amount set out in a compliance agreement entered into with the Minister under subsection 39(1), from the time the compliance agreement is entered into;

(*c*) the amount set out in a notice of default referred to in subsection 39(4), from the time the notice is provided; and

(*d*) the amount of a penalty as set out in a decision of the Minister made under subsection 41(1) or (3), from the time the notice of that decision is provided.

Time limit

(2) No proceedings to recover a debt referred to in subsection (1) may be commenced later than five years after the debt became payable.

Debt final

(3) A debt referred to in subsection (1) is final and not subject to review or to be restrained, prohibited, removed, set aside or otherwise dealt with except to the extent and in the manner provided by sections 38 to 41.

Certificate of default

43. (1) Any debt referred to in subsection 42(1) in respect of which there is a default of payment, or the part of any such debt that has not been paid, may be certified by the Minister.

Judgments

(2) On production to the Federal Court, the certificate shall be registered in that Court and, when registered, has the same force and effect, and all proceedings may be taken on the certificate, as if it were a judgment obtained in that Court for a debt of the amount specified in it and all reasonable costs and charges associated with the registration of the certificate.

Rules About Violations

Certain defences not available

43.1 (1) A person named in a notice of violation does not have a defence by reason that the person

(*a*) exercised due diligence to prevent the violation; or

(*b*) reasonably and honestly believed in the existence of facts that, if true, would exonerate the person.

Common law principles

(2) Every rule and principle of the common law that renders any circumstance a justification or excuse in relation to a charge for an offence under this Act applies in respect of a violation to the extent that it is not inconsistent with this Act.

Burden of proof

43.2 In every case when the facts of a violation are reviewed by the Minister, he or she shall determine, on a balance of probabilities, whether the person named in the notice of violation committed the violation identified in the notice.

Violation by corporate officers, etc.

43.3 If a person other than an individual commits a violation under this Act, any of the person's directors, officers, agents or mandataries who directed, authorized, assented to, acquiesced in or participated in the commission of the violation is a party to and

liable for the violation whether or not the person who actually committed the violation is proceeded against under this Act.

Vicarious liability — acts of employees and agents

43.4 A person is liable for a violation that is committed by any employee, agent or mandatary of the person acting in the course of the employee's employment or the scope of the agent or mandatary's authority, whether or not the employee, agent or mandatary who actually committed the violation is identified or proceeded against under this Act.

Continuing violation

43.5 A violation that is continued on more than one day constitutes a separate violation in respect of each day on which it is continued.

Other Provisions

Evidence

43.6 In any proceeding in respect of a violation or a prosecution for an offence, a notice of violation purporting to be issued under this Act is admissible in evidence without proof of the signature or official character of the person appearing to have signed the notice of violation.

Time limit

43.7 Proceedings in respect of a violation shall not be commenced later than six months after the Minister becomes aware of the acts or omissions that constitute the alleged violation.

How act or omission may be proceeded with

43.8 If an act or omission may be proceeded with either as a violation or as an offence, proceeding in one manner precludes proceeding in the other.

Certification by Minister

43.9 A document appearing to have been issued by the Minister, certifying the day on which the acts or omissions that constitute the alleged violation became known to the Minister, is admissible in evidence without proof of the signature or official character of the person appearing to have signed the document and, in the absence of evidence to the contrary, is proof that the Minister became aware of the acts or omissions on that day.

Publication of information

43.91 The Minister may, for the purpose of encouraging compliance with the provisions of this Act and the regulations, publish information about any violation after proceedings in respect of it are ended.

Section 45

Section 45 amended by replacing subsec. (1), 2017, c. 7, s. 29 (to come into force by order of the Governor in Council):

Analysis

45. (1) A peace officer, inspector or prescribed person may submit to an analyst for analysis or examination any substance or sample of it taken by the peace officer, inspector or prescribed person.

Sections 45.1 to 45.5

Sections 45.1 to 45.5 enacted and amended, as follows, 2017, c. 7, s. 30:

Ministerial Orders

PROVISION OF INFORMATION.

45.1 The Minister may, by order, require a person who is authorized under this Act to conduct activities in relation to controlled substances or precursors or a person who imports designated devices to provide the Minister, in the time and manner that the Minister specifies, with any information respecting those activities that the Minister considers necessary

Note: The portion of s. 45.1 before para. (*a*) replaced, 2017, c. 7, s. 31 (to come into force by order of the Governor in Council):

Provision of information

45.1. Subject to section 24, if, in a preliminary inquiry, trial or other proceeding under this Act or any other Act of Parliament, the court before which the proceedings have been brought is satisfied that any controlled substance, precursor or chemical offence-related property that is the subject of proceedings before the court is no longer required by that court or any other court, the court

- (*a*) **to verify compliance or prevent non-compliance with the provisions of this Act or the regulations; or**
- (*b*) **to address an issue of public health or safety.**

MEASURES.

45.2 The Minister may, by order, require a person who is authorized under this Act to conduct activities in relation to controlled substances or precursors to take measures, in the time and manner that the Minister specifies, to prevent non-compliance with the provisions of this Act or the regulations or, if the Minister has reasonable grounds to believe that there is such non-compliance, to remedy it.

Note: Section 45.2 replaced, 2017, c. 7, s. 32 (to come into force by order of the Governor in Council):

Measures

45.2 The Minister may, by order, require a person who is authorized under this Act to conduct activities in relation to controlled substances or precursors or who conducts activities referred to in section 46.4 in relation to designated devices, to take measures, in the time and manner that the Minister specifies, to prevent non-compliance with the provisions of this Act or the regulations or, if the Minister has reasonable grounds to believe that there is such non-compliance, to remedy it.

REVIEW OFFICER.

45.3 The Minister may designate any qualified individual or class of qualified individuals as review officers for the purpose of reviewing orders under section 45.4.

REQUEST FOR REVIEW / Contents of and time for making request / No authority to review / Reasons for refusal / Review initiated by review officer / Order in effect / Completion of review / Extension of period for review / Reasons for extension / Decision on completion of review / Written notice / Effect of amendment.

45.4 (1) Subject to any other provision of this section, an order that is made under section 45.1 or 45.2 shall be reviewed on the written request of the person who was ordered to provide information or to take measures — but only on grounds that involve questions of fact alone or questions of mixed law and fact — by a review officer other than the individual who made the order.

(2) The request shall state the grounds for review and set out the evidence — including evidence that was not considered by the individual who made the order — that supports those grounds and the decision that is sought. It shall be provided to the Minister within seven days after the day on which the order was provided.

(3) The review is not to be done if the request does not comply with subsection (2) or is frivolous, vexatious or not made in good faith.

(4) The person who made the request shall, without delay, be notified in writing of the reasons for not doing the review.

(5) A review officer — other than the individual who made the order — may review an order, whether or not a request is made under subsection (1).

(6) An order continues to apply during a review unless the review officer decides otherwise.

(7) A review officer shall complete the review no later than 30 days after the day on which the request is provided to the Minister.

(8) The review officer may extend the review period by no more than 30 days if they are of the opinion that more time is required to complete the review. They may extend the review period more than once.

(9) If the review period is extended, the person who made the request shall, without delay, be notified in writing of the reasons for extending it.

(10) On completion of a review, the review officer shall confirm, amend, terminate or cancel the order.

(11) The person who made the request or, if there is no request, the person who was ordered to provide information or to take measures shall, without delay, be notified in writing of the reasons for the review officer's decision under subsection (10).

(12) An order that is amended is subject to review under this section.

STATUTORY INSTRUMENTS ACT.

45.5 The *Statutory Instruments Act* does not apply in respect of an order made under section 45.1 or 45.2.

Section 46

The portion of s. 46 before para. (*a*) replaced, 2017, c. 7, s. 33:

Penalty

46. Every person who contravenes a provision of this Act for which punishment is not otherwise provided, a provision of a regulation or an order made under section 45.1 or 45.2

Sections 46.1 to 46.3

Sections 46.1 to 46.3 enacted, 2017, c. 7, s. 34:

Prohibitions

OFFENCE OF MAKING FALSE OR DECEPTIVE STATEMENTS.

46.1 No person shall knowingly make, or participate in, assent to or acquiesce in the making of, a false or misleading statement in any book, record, return or other document however recorded, required to be maintained, made or furnished under this Act or the regulations.

COMPLIANCE WITH TERMS AND CONDITIONS.

46.2 The holder of a licence, permit, authorization or exemption shall comply with its terms and conditions.

IMPORTATION OF DESIGNATED DEVICE / Information for registration / Registration / Proof of registration / Refusal or cancellation / Disclosure of information — designated device / Disclosure of information to police force.

46.3 (1) No person shall import into Canada a designated device unless they register the importation with the Minister.

Note: Section 46.3 amended by replacing subsec. (1), 2017, c. 7, s. 35(1) (to come into force by order of the Governor in Council):

Importation of designated device

46.3 (1) No person shall import into Canada a designated device unless they register the importation with the Minister and the person imports it in accordance with the regulations.

(2) The following information shall be submitted to the Minister for the purpose of registering the importation of a designated device:

- **(*a*) the name of the person importing the designated device or, if the person is a corporation, the corporate name and any other name registered with a province, under which the person carries out its activities or identifies itself;**
- **(*b*) the person's address or, if the person is a corporation, the address of its primary place of business in Canada;**
- **(*c*) a description of the designated device, including the model number, serial number, and the brand name or trademark associated with it, if any;**
- **(*d*) the address where the designated device will be delivered as well as the street address of the premises where it will be used by the person importing it;**
- **(*e*) the name of the customs office where the importation is anticipated; and**
- **(*f*) the anticipated date of importation.**

Note: Subsection 46.3(2) amended by striking out "and" at the end of para. (*e*), by adding "and" to the end of para. (*f*) and by enacting para. (*g*), 2017, c. 7, s. 35(2) (to come into force by order of the Governor in Council):

(*g*) any other prescribed information.

(3) After the Minister receives the information, the Minister shall register the importation and provide proof of the registration to the person importing the designated device.

(4) The person importing the designated device shall provide the proof of the registration of its importation to the customs office at the time specified by the regulations or, if no time is specified by the regulations, at the time of importation.

(5) The Minister may refuse to register or cancel the registration of the importation of a designated device if the Minister believes on reasonable grounds that false or misleading information was provided, or it is necessary to do so to protect public health or safety or for any other prescribed reason.

(6) The Minister is authorized to disclose to the Canada Border Services Agency or an officer, as defined in section 2(1) of the *Customs Act*, any information submitted under subsection (2) for the purpose of verifying compliance with the provisions of this Act or the regulations.

(7) The Minister is authorized to disclose any information submitted under subsection (2) to a Canadian police force or a member of a Canadian police force who requests the information in the course of an investigation under this Act.

Section 46.4

Section 46.4 enacted, 2017, c. 7, s. 36 (to come into force by order of the Governor in Council):

Designated device — prescribed activity

46.4 No person shall conduct a prescribed activity in relation to a designated device except in accordance with the regulations.

Section 47

Section 47 replaced, 2017, c. 7, s. 37:

TIME LIMIT / Venue.

47. (1) No summary conviction proceedings in respect of an offence under subsection 4(2) or 32(2) or the regulations or in respect of a contravention of an order made under section 45.1 or 45.2 shall be commenced after the expiry of one year after the time when the subject matter of the proceedings arose.

(2) Proceedings in respect of a contravention of any provision of this Act or the regulations or of an order made under section 45.1 or 45.2 may be held in the place where the offence was committed or where the subject matter of the proceedings arose or in any place where the accused is apprehended or happens to be located.

Section 51

Subsection 51(1) replaced, 2017, c. 7, s. 38(1):

CERTIFICATE OR REPORT OF ANALYST / Attendance of analyst.

51. (1) A certificate or report prepared by an analyst under subsection 45(2) is admissible in evidence in any prosecution for an offence under this Act or any other Act of Parliament and, in the absence of evidence to the contrary, is proof of the statements set out in the certificate or report, without proof of the signature or official character of the person appearing to have signed it.

2. Subsection 51(3) repealed, 2017, c. 7, s. 38(2).

Section 55

1. The heading before s. 55 replaced, 2017, c. 7, s. 39:

2. The portion of subsec. 55(1) before para. (*a*) replaced, 2017, c. 7, s. 40(1):

Regulations

55. (1) The Governor in Council may make regulations for carrying out the purposes and provisions of this Act, including the regulation of the medical, scientific and industrial applications and distribution of controlled substances and precursors and the enforcement of this Act, as well as the regulation of designated devices and, without restricting the generality of the foregoing, may make regulations

3. Paragraphs 55(1)(*c*) to (*e*) replaced, 2017, c. 7, s. 40(3):

(*c*) respecting the issuance, suspension, cancellation, duration and terms and conditions of any licence or class of licences for the importation into Canada, exportation from Canada, production, packaging, sale, provision or administration of any substance included in Schedule I, II, III, IV, V or VI or any class of those substances;

(*d*) respecting the issuance, suspension, cancellation, duration and terms and conditions of any permit for the importation into Canada, exportation from Canada or production of a substance included in Schedule I, II, III, IV, V or VI or any class of those substances as well as the amount of those substances or any class of those substances that may be imported, exported or produced under such a permit;

(*d*.1) authorizing the Minister to impose terms and conditions on any licence or any permit including existing licences or permits, and to amend those terms and conditions.

(*e*) prescribing the fees payable on application for any of the licences or permits;

4. Paragraphs 55(1)(*m*) and (*n*) replaced, 2017, c. 7, s. 40(6):

(*m*) respecting records, reports, electronic data or other documents in respect of controlled substances, precursors or designated devices that are required to be kept and provided by any person or class of persons;

(*n*) respecting the qualifications for inspectors and their powers, duties and functions in relation to verifying compliance or preventing non-compliance with the provisions of this Act or the regulations;

5. Paragraphs 55(1)(*p*) and (*q*) replaced, 2017, c. 7, s. 40(7):

(*p*) respecting the detention and disposition of or otherwise dealing with any controlled substance, precursor, designated device, offence-related property or conveyance;

(*q*) [*Repealed*, 2017, c. 7, s. 40(7).];

6. Paragraph 55(1)(*s*) replaced, 2017, c. 7, s. 40(8):

(*s*) respecting the collection, use, retention, disclosure and disposal of information;

7. Paragraph 55(1)(*u*) replaced, 2017, c. 7, s. 40(10):

(*u*) authorizing the Minister to add to or delete from, by order, a schedule to Part J of the *Food and Drug Regulations* any item or portion of an item included in Schedule V;

8. Paragraphs 55(1)(*w*) to (*z*) replaced, 2017, c. 7, s. 40(11):

(*w*) establishing classes or groups of controlled substances, precursors or designated devices;

(*x*) respecting the provision of information under section 45.1;

(*y*) respecting the measures referred to in section 45.2.

(*y*.1) respecting the review of orders under section 45.4;

(*z*) exempting, on any terms and conditions that are specified in the regulations, any person or class of persons or any controlled substance, precursor, designated device or any class of controlled substances, precursors or designated devices from the application of all or any of the provisions of this Act or the regulations;

(*z*.01) respecting the registration of the importation of any designated device or class of designated devices, including the time that proof of registration must be provided; and

Note: Subsection 55.1(1) amended by striking out "and" at the end of para. (*z*.01) and by adding paras. (*z*.02) and (*z*.03), 2017, c. 7, s. 40(12) (to come into force by order of the Governor in Council):

(*z*.02) governing, controlling, limiting, authorizing the importation into Canada, exportation from Canada, sale, provision, possession of or other dealing in any designated device or any class of designated devices;

(*z*.03) respecting the issuance, suspension, cancellation, duration and terms and conditions of any licence or class of licences or of any permit for the importation into Canada, exportation from Canada, sale, provision or possession of any designated device or class of designated devices; and

Note: Subsection 55.1(1) amended by striking out "and" at the end of para. (*z*.03) and by adding paras. (*z*.04) to (*z*.06), 2017, c. 7, s. 40(13) (to come into force by order of the Governor in Council):

(*z*.04) prescribing exportation from Canada, sale, provision, or possession of any designated device or any class of designated devices as activities for the purpose of section 46.4;

(*z*.05) respecting the circumstances in which, the conditions subject to which and the persons or classes of persons by whom any designated device or class of designated devices may be exported from Canada, sold, provided or possessed, as well as the means by which and the persons or classes of persons by whom such activities may be authorized;

(*z*.06) respecting the registration of activities in relation to any designated device or any class of designated devices for the purpose of section 46.4; and

9. Subsection 55(1.1) repealed, 2017, c. 7, s. 40(14).

10. Paragraphs 55(1.2)(*b*) to (*f*) replaced, 2017, c. 7, s. 40(15):

(*b*) [*Repealed*, 2017, c. 7, s. 40(15).];

(*c*) respecting any information to be submitted to the Minister and the manner in which it is to be submitted;

(*d*) respecting the circumstances in which an exemption may be granted;

(*e*) respecting requirements in relation to an application for an exemption made under subsection 56.1(1); and

(*f*) respecting terms and conditions in relation to an exemption granted under subsection 56.1(1).

11. The portion of subsec. 55(2) before para. (*d*) replaced, 2017, c. 7, s. 40(16):

(2) The Governor in Council, on the recommendation of the Minister of Public Safety and Emergency Preparedness, may make regulations that pertain to investigations and other law enforcement activities conducted under this Act by a member of a police force or of the military police and other persons acting under the direction and control of the member and, without restricting the generality of the foregoing, may make regulations

(*a*) authorizing, for the purposes of this subsection,

(i) the Minister of Public Safety and Emergency Preparedness or the provincial minister responsible for policing in a province, as the case may be, to designate a police force within their jurisdiction, or

(ii) the Minister of National Defence to designate military police;

(*b*) exempting, on any terms and conditions that are specified in the regulations, a member of a police force or of the military police that has been designated under paragraph (*a*), and other persons acting under the direction and control of the member, from the application of any provision of Part I or the regulations;

(*c*) respecting the issuance, suspension, cancellation, duration and terms and conditions of a certificate, other document or, in exigent circumstances, an approval to obtain a certificate or other document, that is issued to a member of a police force or of the military police that has been designated under paragraph (*a*) for the purpose of exempting the member from the application of any provision of this Act or the regulations;

12. Paragraph 55(2)(*d*) replaced, 2017, c. 7, s. 40(17):

(*d*) respecting the detention, storage and disposition of or other dealing with any controlled substance or precursor;

13. The portion of subsec. 55(2.1) before para. (*d*) replaced, 2017, c. 7, s. 40(18):

(2.1) The Governor in Council, on the recommendation of the Minister of Public Safety and Emergency Preparedness, may, for the purpose of an investigation or other law enforcement activity conducted under another Act of Parliament, make regulations authorizing a member of a police force or of the military police or other person under the direction and control of the member to commit an act or omission — or authorizing a member of a police force or of the military police to direct the commission of an act or omission — that would otherwise constitute an offence under Part I or the regulations and, without restricting the generality of the foregoing, may make regulations

(*a*) authorizing, for the purposes of this subsection,

(i) the Minister of Public Safety and Emergency Preparedness or the provincial minister responsible for policing in a province, as the case may be, to designate a police force within their jurisdiction, or

(ii) the Minister of National Defence to designate military police;

(*b*) exempting, on any terms and conditions that are specified in the regulations, a member of a police force or of the military police that has been designated under paragraph (*a*), and other persons acting under the direction and control of the member, from the application of any provision of Part I or the regulations;

(*c*) respecting the issuance, suspension, cancellation, duration and terms and conditions of a certificate, other document or, in exigent circumstances, an approval to obtain a certificate or other document, that is issued to a member of a police force or of the military police that has been designated under paragraph (*a*) for the purpose of exempting the member from the application of any provision of Part I or the regulations;

14. Paragraph 55(2.1)(*d*) replaced, 2017, c. 7, s. 40(19):

(*d*) respecting the detention, storage and disposition of or other dealing with any controlled substance or precursor;

Section 56

Subsection 56(2) replaced, 2017, c. 7, s. 41:

(2) The Minister is not authorized under subsection (1) to grant an exemption for a medical purpose that would allow activities in relation to a controlled substance or precursor that is obtained in a manner not authorized under this Act to take place at a supervised consumption site.

Section 56.1

Section 56.1 replaced, 2017, c. 7, s. 42:

EXEMPTION FOR MEDICAL PURPOSE — SUPERVISED CONSUMPTION SITE / Application / Subsequent application / Notice / Public decision.

56.1 (1) For the purpose of allowing certain activities to take place at a supervised consumption site, the Minister may, on any terms and conditions that the Minister considers necessary, exempt the following from the application of all or any of the provisions of this Act or the regulations if, in the opinion of the Minister, the exemption is necessary for a medical purpose:

- **(*a*) any person or class of persons in relation to a controlled substance or precursor that is obtained in a manner not authorized under this Act; or**
- **(*b*) any controlled substance or precursor or any class of either of them that is obtained in a manner not authorized under this Act;**

(2) An application for an exemption under subsection (1) shall include information, submitted in the form and manner determined by the Minister, regarding the intended public health benefits of the site and information, if any, related to

- **(*a*) the impact of the site on crime rates;**
- **(*b*) the local conditions indicating a need for the site;**
- **(*c*) the administrative structure in place to support the site;**
- **(*d*) the resources available to support the maintenance of the site; and**
- **(*e*) expressions of community support or opposition.**

(3) An application for an exemption under subsection (1) that would allow certain activities to continue to take place at a supervised consumption site shall include any update to the information provided to the Minister since the previous exemption was granted, including any information related to the public health impacts of the activities at the site.

(4) The Minister may give notice, in the form and manner determined by the Minister, of any application for an exemption under subsection (1). The notice shall indicate the period of time - not less than 45 days or more than 90 days - in which members of the public may provide the Minister with comments.

(5) After making a decision under subsection (1), the Minister shall, in writing, make the decision public and, if the decision is a refusal, include the reasons for it.

Section 56.2

Section 56.2 enacted, 2017, c. 7, s. 42:

56.2 A person who is responsible for the direct supervision, at a supervised consumption site, of the consumption of controlled substances, may offer a person using the site alternative pharmaceutical therapy before that person consumes a controlled substance that is obtained in a manner not authorized under this Act.

Section 57

The following heading is enacted to precede s. 57, 2017, c. 7, s. 43:

Miscellaneous

Section 59

Section 59 repealed, 2017, c. 7, s. 45.

Section 60

Section 60 replaced, 2017, c. 7, s. 45:

SCHEDULES.

60. The Governor in Council may, by order, amend any of Schedules I to IV and VI to IX by adding to them or deleting from them any item or portion of an item, if the Governor in Council considers the amendment to be necessary in the public interest.

Section 60.1

Section 60.1 enacted, 2017, c. 7, s. 45:

SCHEDULE V / Deletions.

60.1 (1) The Minister may, by order, add to Schedule V any item or portion of an item for a period of up to one year, or extend that period by up to another year, if the Minister has reasonable grounds to believe that it

- **(*a*) poses a significant risk to public health or safety; or**
- **(*b*) may pose a risk to public health or safety and**
  - **(i) is being imported into Canada with no legitimate purpose, or**
  - **(ii) is being distributed in Canada with no legitimate purpose.**

(2) The Minister may, by order, delete any item or portion of an item from Schedule V. 2017, c. 7, s. 45.

Schedule I

1. Schedule I amended by replacing the references after the heading "SCHEDULE I" with the following, 2017, c. 7, s. 46.:

(Sections 2, 4 to 7.1, 10, 29, 55 and 60)

2. Item 2 of Schedule I amended by adding the following after subitem (3), SOR/2017-275, s. 1:

but not
including

(4) ^{123}I-ioflupane

3. Schedule I amended by adding the following after item 25, SOR/2017-277:

26. U-47700 (3,4-dichloro-N-(2-(dimethylamino)cyclohexyl)-N-methylbenzamide), its salts, derivatives, isomers and analogues, and salts of derivatives, isomers and analogues, including

(1) Bromadoline (4-bromo-N-(2-(dimethylamino)cyclohexyl)benzamide)

(2) U-47109 (3,4-dichloro-N-(2-(dimethylamino)cyclohexyl)benzamide)

(3) U-48520 (4-chloro-N-(2-(dimethylamino)cyclohexyl)-N-methylbenzamide)

(4) U-50211 (N-(2-(dimethylamino)cyclohexyl)-4-hydroxy-N-methylbenzamide)

(5) U-77891 (3,4-dibromo-N-methyl-N-(1-methyl-1-azaspiro[4.5]decan-6-yl)benzamide)

Schedule II

Schedule II amended by replacing the references after the heading "SCHEDULE II" with the following, 2017, c. 7, s. 47:

(Sections 2, 4 to 7.1, 10, 29, 55 and 60)

Schedule III

1. Schedule III amended by replacing the references after the heading "SCHEDULE III" with the following, 2017, c. 7, s. 48:

(Sections 2, 4 to 7.1, 10, 29, 55 and 60)

2. Item 18 of Schedule III repealed, SOR-2017-249, s. 1.

3. Item 27 of Schedule III replaced, SOR/2017-249, s. 2:

27. Aminorex (5-phenyl-4,5-dihydro-1,3-oxazol-2-amine), its salts, derivatives, isomers and analogues and salts of derivatives, isomers and analogues, including

(1) 4-Methylaminorex (4-methyl-5-phenyl-4,5-dihydro-1,3-oxazol-2-amine)

(2) 4,4'-Dimethylaminorex (4-methyl-5-(4-methylphenyl)-4,5-dihydro-1,3-oxazol-2-amine)

Schedule IV

1. Schedule IV amended by replacing the references after the heading "SCHEDULE IV" with the following, 2017, c. 7, s. 49:

(Sections 2, 4 to 7.1, 10, 29, 55 and 60)

2. Part 1 of Schedule VI amended by adding the following after item 30, SOR/2017-277:

31. N1,N1,N2-trimethylcyclohexane-1,2-diamine and its salts

Schedule V

Schedule V replaced by the Schedule V set out in Schedule 1, 2017, c. 7, s. 50 (Sched. 1), as follows:

Schedule V

(Sections 2, 5 to 7.1, 10, 55 and 60.1)

1. **[Repealed SOR/2002-361, s. 1.]**
2. **[Repealed 2017, c. 7, s. 50 (Sched. 1).]**
3. **[Repealed SOR/2003-32, s. 7.]**

Schedule IX

Schedule IX enacted, 2017, c. 7, s. 51 (Sched. 2), to follow Schedule VIII:

SCHEDULE IX

(Sections 2 and 60)

1. **Manual, semi-automatic or fully automatic device that may be used to compact or mould powdered, granular or semi-solid material to produce coherent solid tablets**
2. **Manual, semi-automatic or fully automatic device that may be used to fill capsules with any powdered, granular, semi-solid or liquid material**

CORRIGENDUM

The last paragraph before the annotations under s. 266 of the ***Criminal Code*** states:

> "The offence in this section is a primary designated offence for the purpose of making a forensic DNA data bank order under s. 487.051."

This paragraph should read as follows:

> "The offence in this section is a secondary designated offence for the purpose of making a forensic DNA data bank order under s. 487.051."

Sections 241 and 241.1 of the ***Criminal Code*** currently refer to s. 122 in the Cross-reference sections. The reference should be to s. **222**.

Offence Grid: For s. 130, the maximum states 2 years. It should be **5** years.

The annotations for the ***Canada Evidence Act*** were heavily amended. The following are annotations that were deleted.

Section 4: Delete annotations for *R. v. Marciniec*; *Pratte v. Maher*; *R. v. McConnell*; *R. v. Potvin*; *R. v. Vezeau*

Section 5: Delete annotations for *R. v. Tass*; *R. v. Noel*

Section 7: Delete annotations for *R. v. Bleta*; *R. v. French*

Section 8: Delete annotation for *R. v. Abdi*

Section 9: Delete annotation for *R. v. U. (F.J.)*

Section 23: Delete annotation for *R. v. Caesar*

Section 30: Delete annotation for *R. v. Baker*

Additional case annotations for the *Canada Evidence Act* can be found in the following CASE LAW UPDATE of this Supplement.

TABLE OF CASES

References are to section numbers of the *Criminal Code* except where preceded by one of the following:

CE	Canada Evidence Act
CH	Canadian Charter of Rights and Freedoms
CD	Controlled Drugs and Substances Act
WC	Crimes Against Humanity and War Crimes Act
YC	Youth Criminal Justice Act

Sections

CASE LAW UPDATE

Criminal Code, s. 2

Prosecutors on indictable offences need to be legally trained: *Alberta (Attorney General) v. Edmonton Police Service* (2017), 344 C.C.C. (3d) 357 (Alta. Q.B.).

Criminal Code, s. 17

However, see *R. v. Willis* (2016), 344 C.C.C. (3d) 443 (Man. C.A.), leave to appeal to S.C.C. refused 2017 CarswellMan 192, in which the court expressly rejected *Aravena*, holding that s. 17 is consistent with the principles of fundamental justice because it can never be proportionate to take another life to avoid a mere threat to one's own.

Criminal Code, s. 85

Constitutional considerations – The minimum one-year consecutive sentences mandated by the combination of subsecs. (3)(*a*) and (4) do not infringe the s. 12 Charter guarantee against cruel and unusual punishment: *R. v. Al-Isawi* (2017), 348 C.C.C. (3d) 524 (B.C.C.A.).

Criminal Code, s. 121

The phrase "any matter of business relating to the government" is not limited to transactions to which the government is a party. The gravamen of the offence under subsec. (1)(*d*) is the acceptance of a benefit in exchange for a promise to influence government, whether or not any transaction results: *R. v. Carson* (2017), 347 C.C.C. (3d) 164 (Ont. C.A.).

Criminal Code, s. 129

Resisting a peace officer requires more than being uncooperative. It requires active physical resistance: *R. v. Kennedy* (2016), 345 C.C.C. (3d) 530 (Ont. C.A.).

Criminal Code, s. 150.1

To convict an accused person who demonstrates an air of reality to the mistake of age defence, the Crown must prove, beyond a reasonable doubt, either that the accused person did not honestly believe the complainant was at least 16, or did not take all reasonable steps to ascertain the complainant's age. Determining what raises a reasonable doubt in respect of the objective element is a highly contextual, fact-specific exercise. In some cases, it may be

reasonable to ask a partner's age. In some cases more may be required, given the obvious motivation for young people to misrepresent their age. One general rule may be recognized: the more reasonable an accused's perception of the complainant's age, the fewer steps will reasonably be required of them: *R. v. George* (2017), 138 W.C.B. (2d) 634 (S.C.C.).

Criminal Code, s. 153

A person who is relied upon by the young person's parent or guardian to exercise responsibility *vis-à-vis* the young person is generally in a position of trust for the purpose of this offence: *R. v. EJB* (2017), 352 C.C.C. (3d) 59 (Alta. C.A.).

Criminal Code, s. 161

The term "community centre" in subsec. (1)(*a*) must be given an expansive meaning consistent with the objective of protecting children. A public library was held to fall within the definition: *R. v. Allaby* (2017), 353 C.C.C. (3d) 476 (Sask. C.A.).

Criminal Code, s. 172.1

Constitutional considerations – The presumption in subsec. (3) infringes the presumption of innocence guaranteed by s. 11(*d*), and is not justified by s. 1. It is therefore of no force or effect. However, the reasonable steps requirement in subsec. (4) does not infringe the Charter: *R. v. Morrison* (2017), 350 C.C.C. (3d) 161 (Ont. C.A.), leave to appeal to S.C.C. allowed 2017 CarswellOnt 19980.

The mandatory minimum sentence prescribed by subsec. (2)(*a*) is contrary to s. 12 of the Charter and of no force or effect: *R. v. Morrison*, *supra*.

Criminal Code, s. 223

The exclusion of fetuses from the definition of "human being" is constitutional and there was no basis for revisiting the settled authority to that effect: *R. v. Mary Wagner* (2016), 352 C.C.C. (3d) 112 (Ont. S.C.J.).

Criminal Code, s. 232

Thus, the trial judge did not err in directing the jury not to consider the accused's intellectual capacity and psychological makeup in applying the "ordinary person" test: *R. v. Berry* (2017), 345 C.C.C. (3d) 32 (Ont. C.A.).

Criminal Code, s. 252

One line of authority holds that the "civil or criminal liability" contemplated by this offence relates to liability which could arise from the accident itself, not to some liability which the accused may have incurred prior to the accident, such as the risk of being arrested for a robbery or for driving while suspended: *R. v. Fournier* (1979), 8 C.R. (3d) 248 (C.A. Que.); *R. v. MacLean* (1982), 40 Nfld. & P.E.I.R. 297 (P.E.I.S.C.). Another line of authority interprets "civil or criminal liability" more broadly to include any offences that might properly arise from the operation of the motor vehicle by the accused at the time the accident takes place: *R. v. Seipp* (2017), 344 C.C.C. (3d) 401 (B.C.C.A.), leave to appeal to S.C.C. allowed 2017 CarswellBC 1519; *R. v. Sanford* (2014), 66 M.V.R. (6th) 321 (Ont. S.C.J.); *R. v. Benson* (1987), 50 M.V.R. 131 (Ont. Dist. Ct.); *R. v. Hofer* (1982), 2 C.C.C. (3d) 236 (Sask. C.A.).

The intent requirement was satisfied where the accused fled the scene because he did not want to be identified as the driver of a car he knew to be stolen: *R. v. Seipp*, *supra*.

[All the annotations in sub-heading "Civil or criminal liability" should be replaced by:]

The "civil or criminal liability" contemplated by this section includes any liability, civil or criminal, which might properly arise from the operation of the motor vehicle by the accused at the time the accident takes place. The liability a driver seeks to evade does not need to arise solely from the consequences of the accident itself, but may also encompass offences connected to the driving, such as impaired driving, driving while suspended, criminal negligence, and dangerous driving. Being the driver of a stolen car when involved in an accident, and fleeing to avoid detection as the driver, is sufficiently related to the event to be captured by this provision: *R. v. Seipp* (2017), 344 C.C.C. (3d) 401 (B.C.C.A.), affd 2018 SCC 1.

Criminal Code, s. 255

Causation – "over 80" (subsecs. (2.1) and (3.1)) – One line of authority holds that the offences of driving "over 80" causing death and bodily harm do *not* require a causal link between the accused's blood alcohol level and the accident to be proven: *R. c. Gaulin* (2017), 353 C.C.C. (3d) 330 (C.A. Que.); *R. v. Koma* (2015), 329 C.C.C. (3d) 29 (Sask. C.A.). Other authorities hold that the "over 80 driving" must be a real factor in causing the accident: *R. v. Jagoe* (2012), 302 C.C.C. (3d) 454 (N.B.C.A.).

Criminal Code, s. 258

In *R. v. Alex* (2017), 10 M.V.R. (7th) 1 (S.C.C.), the court rejected a challenge to the decision in *Rilling*, *supra*. The Crown does not have to prove the existence of a lawful demand to avail itself of the evidentiary shortcuts in subsec. (1)(*c*) and (*g*). The court found it unnecessary to decide whether *Rilling* was correct when decided. The scientific reliability of the results of properly administered breath tests is now firmly established. Section 8 of the Charter, in combination with s. 24(2), provides a comprehensive and direct protection against unreasonable searches and seizures, including those of breath samples.

Criminal Code, s. 259

Where an order is made under subsec. (2)(*a*.1), the period of driving prohibition is the aggregate of two components: (i) the period of imprisonment; and (ii) the period of driving prohibition specified by the court. Sentencing judges should articulate the two components of the prohibition, both in the sentence pronounced and in the documents issued to give effect to the prohibition: *R. v. Bansal* (2017), 352 C.C.C. (3d) 374 (B.C.C.A.).

Criminal Code, s. 273.2

This provision applies to all sexual assaults, regardless of the age of the complainant. Accordingly, where a defence of mistake of fact as to the age of the complainant is raised, the court must consider if recklessness, willful blindness, or self-induced intoxication affected the honesty of the accused's belief: *R. v. Nguyen* (2017), 348 C.C.C. (3d) 238 (Sask. C.A.).

Criminal Code, s. 273.3

The gravamen of this offence is doing something for the purpose of removing a child, who falls within a certain class of children and who is ordinarily resident in Canada, from Canada. The accused, while in this country, must have done something for the purpose of removing the child from Canada. At the time the accused did something for the purpose of removing the child from Canada, he or she must also have had the intention or subjective foresight that the child would be the object of an act which, if it were committed in Canada, would constitute one of the sexual offences specified in subsec. (1): *R. v. Blackmore* (2017), 345 C.C.C. (3d) 96 (B.C.S.C.).

Criminal Code, s. 286.1

In relation to the former s. 212(4) — now s. 286.1(2) — it was held that the six-month mandatory minimum sentence was contrary to s. 12 of the Charter and of no force or effect: *R. v. J.L.M.* (2017), 353 C.C.C. (3d) 40 (B.C.C.A.).

Criminal Code, s. 293

There is no requirement for the Crown to prove harm, compulsion, or lack of consent as an essential element of the polygamy offence. The offence embraces both a marriage and a conjugal union but does not require proof of both: *R. v. Blackmore* (2017), 350 C.C.C. (3d) 429 (B.C.S.C.).

Criminal Code, s. 319

New forms of Internet-based communication do not amount to changed circumstances justifying reconsideration of *Keegstra*, *supra*. This provision remains constitutional: *R. v. Topham* (2017), 345 C.C.C. (3d) 542 (B.C.S.C.).

Criminal Code, s. 347

The Crown must prove that the accused knew (or was willfully blind to the fact) that the terms of the agreement charged an effective annual rate of interest in excess of 60 percent: *R. v. Saikaley* (2017), 348 C.C.C. (3d) 290 (Ont. C.A.).

Criminal Code, s. 434.1

The Crown is not required to prove that the accused knew that the fire threatened the health, safety, or property of others: *R. v. Bastien* (2017), 349 C.C.C. (3d) 149 (B.C.C.A.).

Criminal Code, s. 462.34

Monies released for legal expenses pursuant to this provision are still subject to a fine in lieu of forfeiture under s. 462.37(3): *R. v. Rafilovich* (2017), 353 C.C.C. (3d) 293 (Ont. C.A.), additional reasons (2017), 142 W.C.B. (2d) 289, 2017 ONCA 824.

Criminal Code, s. 462.37

It is an error to decline to order a fine in lieu of forfeiture in respect of certain proceeds simply because those proceeds were released by the court pursuant to s. 462.34(4) to pay legal expenses: *R. v. Rafilovich* (2017), 353 C.C.C. (3d) 293 (Ont. C.A.), additional reasons (2017), 142 W.C.B. (2d) 289, 2017 ONCA 824.

Criminal Code, s. 487.0193

Where a media organization challenges a production order, the same standard of review applies as when a non-media target challenges an order: *R. v. Vice Media Canada Inc.* (2017), 352 C.C.C. (3d) 355 (Ont. C.A.), leave to appeal to S.C.C. allowed 2017 CarswellOnt 19052.

Where an affected party sought to revoke or vary a production order under this section, and also sought prerogative relief in the nature of *certiorari*, an appeal to the Court of Appeal lay under s. 784: *R. v. Vice Media Canada Inc.*, *supra*.

Criminal Code, s. 488.1

Legal correspondence, including reporting letters, have a rebuttable presumption that it is subject to solicitor-client privilege. It was therefore improper for a search warrant to authorize the seizure of legal correspondence: *R. v. Douglas* (2017), 351 C.C.C. (3d) 58 (Man. C.A.), leave to appeal to S.C.C. refused 2017 CarswellMan 584.

Criminal Code, s. 490

Applicants under subsec. (7) are under a duty to make full and frank disclosure so that the court can make an informed decision about, among other things, whether other interested parties must be given notice of the proceeding: *R. v. Floward Enterprises Ltd. (H. Williams and Co.)* (2017), 348 C.C.C. (3d) 409 (Ont. C.A.), additional reasons 2017 ONCA 643.

Where a third party with a claim to seized property was not given notice of an application under subsec. (7) because the applicant failed to make full and frank disclosure to the court, the third party has a right of appeal under subsec. (17): *R. v. Floward Enterprises Ltd. (H. Williams and Co.)* (2017), 348 C.C.C. (3d) 409 (Ont. C.A.), additional reasons 2017 ONCA 643.

Criminal Code, s. 515

Forms of release (subsec. (2)) – A central part of the law of bail consists of the ladder principle and the authorized forms of release, which are found in subsecs. (1) to (3). Save for exceptions, an unconditional release on an undertaking is the default position when granting release. Alternative forms of release are to be imposed in accordance with the ladder principle, which must be adhered to strictly: release is favoured at the earliest reasonable opportunity and on the least onerous grounds. If the Crown proposes an alternate form of release, it must show why this form is necessary for a more restrictive form of release to be imposed. Each rung of the ladder must be considered individually and must be rejected before moving to a more restrictive form of release.

Where the parties disagree on the form of release, it is an error of law for a judge to order a more restrictive form without justifying the decision to reject the less onerous forms. A recognizance with sureties is one of the most onerous forms of release, and should not be imposed unless all the less onerous forms have been considered and rejected as inappropriate: *R. v. Antic* (2017), 347 C.C.C. (3d) 231 (S.C.C.).

Cash bail – It is not necessary to impose cash bail on accused persons if they or their sureties have reasonably recoverable assets and are able to pledge those assets to the satisfaction of the court. A recognizance is functionally equivalent to cash bail and has the same coercive effect. Cash bail should be relied on only in exceptional circumstances in which release on a recognizance with sureties is unavailable. When cash bail is ordered, the amount must not be set so high that it effectively amounts to a detention order, which means that the amount should be no higher than necessary to satisfy the concern that would otherwise warrant detention and proportionate to the means of the accused and the circumstances of the case. The judge is under a positive obligation to inquire into the ability of the accused to pay: *R. v. Antic*, *supra.*

Reasonable conditions (subsec. (4)) – Conditions of release under s. 515(4) should only be imposed to the extent that they are necessary to address concerns related to the statutory criteria for detention and to ensure that the accused is released. They must not be imposed to change an accused person's behaviour or to punish an accused person: *R. v. Antic*, *supra.*

Police officer acting as prosecutor – The differing definitions of "prosecutor" under s. 2 (applicable generally) and s. 785 (applicable only to summary conviction matters) make clear that Parliament intended prosecutors at bail hearing on indictable offences to be legally trained. It is not permissible for a police officer to act as the prosecutor at a bail hearing where an indictable offence is charged: *Alberta (Attorney General) v. Edmonton Police Service* (2017), 344 C.C.C. (3d) 357 (Alta. Q.B.).

Criminal Code, s. 523

The superior court lacks jurisdiction to review a detention order made by the provincial court under subsec. (2)(*a*), either by way of inherent jurisdiction or *habeas corpus*: *R. v. Passera* (2017), 352 C.C.C. (3d) 478 (Ont. C.A.).

Criminal Code, s. 536

Where the accused receives no advice from counsel as to his options in respect of election, the accused has effectively been denied his right to choose his mode of trial. Proceeding against the accused without allowing him to make an

informed election constitutes a miscarriage of justice, and the accused need not establish further prejudice: *R. v. Stark* (2017), 347 C.C.C. (3d) 73 (Ont. C.A.).

Criminal Code, s. 554

Joint trial of summary conviction and provincial offence charges – At least in Ontario, a provincial court judge has jurisdiction to conduct a joint trial of provincial charges and summary conviction criminal charges. The two-part common law test for joinder set out in *R. v. Clunas*, *supra*, applies to joinder in this context: *R. v. Sciascia*, 2017 SCC 57.

Criminal Code, s. 589

This provision is an exception to the general rule of joinder in s. 591(1) that any number of counts for any number of offences may be joined in the same indictment. The purpose of the "same transaction" carve-out in para. (*a*) is to permit the inclusion of other offences, such as sexual assault and robbery, during the commission of which a person was killed. "Transaction" is not confined to a single event or occurrence; it can embrace a series of connected acts or events that extend over a period of time. Where the deceased had been punched repeatedly by one accused (charged with murder) then knocked out some time later by the second accused (charged with manslaughter) it was permissible to try the two accused together because the events amounted to a single transaction: *R. v. Manasseri* (2016), 344 C.C.C. (3d) 281 (Ont. C.A.), leave to appeal to S.C.C. refused 2017 CarswellOnt 5288.

Criminal Code, s. 591

[Delete *Sciascia* Ont. C.A. annotation:]

Joint trial of summary conviction and provincial offence charges – At least in Ontario, a provincial court judge has jurisdiction to conduct a joint trial of provincial charges and summary conviction criminal charges. The two-part common law test for joinder set out in *R. v. Clunas*, *supra*, applies to joinder in this context: *R. v. Sciascia*, 2017 SCC 57.

Criminal Code, s. 627

Despite this provision, a trial judge's decision to discharge pursuant to s. 644 a juror whose health problems seemed to compromise his ability to carry out his duties did not amount to impermissible discrimination. In any event, the accused had no entitlement on appeal to assert the rights of a juror: *R. v. Kossyrine* (2017), 348 C.C.C. (3d) 508 (Ont. C.A.).

Criminal Code, s. 640

Where defence counsel's stated position could reasonably be construed as an application to exclude all jurors from the courtroom and use static triers to try the challenge for cause, the court was properly constituted despite the absence of an explicit application under subsec. (2.1): *R. v. Kossyrine* (2017), 348 C.C.C. (3d) 508 (Ont. C.A.); *R. v. Mansingh* (2017), 136 W.C.B. (2d) 16, [2017] O.J. No. 379 (C.A.).

[After Nourreddine add:] *R. v. Husbands* (2017), 353 C.C.C. (3d) 317 (Ont. C.A.).

Criminal Code, s. 674

[Replace current *Pardy* annotation with:]

Courts of appeal are divided on whether there is jurisdiction to entertain an appeal, prior to trial, from a refusal to grant a "*Rowbotham*" order for state funding of counsel. On one view, the application should be characterized as civil in nature, avoiding the prohibition on interlocutory appeals in criminal matters: *R. v. Pardy* (2014), 315 C.C.C. (3d) 217 (N.L.C.A.); *R. v. Hennessey* (2017), 347 C.C.C. (3d) 412 (N.L.C.A.). However, other authority holds that such appeals are barred by s. 674: *R. v. Dunkers* (2010), 505 W.A.C. 47 (B.C.C.A. [In Chambers]); *R. v. Hales* (2009), 331 Sask. R. 102 (C.A.).

Criminal Code, s. 676

An abstract or purely hypothetical possibility of materiality is below the threshold for appellate intervention while an error that would necessarily have been material is above the threshold. An error about which there is a reasonable degree of certainty of its materiality is at the required threshold: *R. v. George* (2017), 138 W.C.B. (2d) 634, 2017 SCC 38.

Whether an error is "legal" generally turns on its character, not its severity. It was an error for the Court of Appeal to translate its strong opposition to the trial judge's factual inferences (severity) into supposed legal errors (character). Such an approach disregards the restraint required by Parliament's choice to limit Crown appeals from acquittals in proceedings by indictment to questions of law alone: *R. v. George*, *supra.*

Change of position by Crown on appeal – The Crown may not use its right of appeal to secure a retrial based on a theory or legal argument not advanced at the first trial: *R. v. Suarez-Noa* (2017), 350 C.C.C. (3d) 267 (Ont. C.A.); *R. v. Wexler*, [1939] S.C.R. 350, 72 C.C.C. 1.

Criminal Code, s. 686

To establish ineffective assistance based on trial counsel's conflict of interest, the appellant must demonstrate an actual conflict of interest on the part of counsel, and that the conflict impaired counsel's ability to effectively represent him or her. The appellant need not demonstrate that, but for the ineffective assistance, the verdict would have been different: *R. v. Baharloo* (2017), 348 C.C.C. (3d) 64 (Ont. C.A.).

It is an error of law for an appellate court to apply the curative proviso on its own motion. It can only be applied upon submissions from a party: *R. v. G. (P.)* (2017), 348 C.C.C. (3d) 368 (Ont. C.A.); *R. c. Pétel*, [1994] 1 S.C.R. 3, 87 C.C.C. (3d) 97.

Criminal Code, s. 714.1

Where credibility is at issue, the court should authorize video testimony under this section only in the face of exceptional circumstances that impact the proposed witness. Mere inconvenience should not suffice: *R. v. S.D.L.* (2017), 352 C.C.C. (3d) 159 (N.S.C.A.).

Criminal Code, s. 715.1

The Crown bears the onus of proving the preconditions of subsec. (1) and it is an error of law to reverse the onus on this issue: *R. v. H. (R.A.)* (2017), 348 C.C.C. (3d) 248 (P.E.I.C.A.).

Criminal Code, s. 715.2

"Adopts" in this section has the same meaning as in s. 715.1. Therefore, it does not require the witness to be able to confirm the truth of the video-recorded statement based on present memory of the events in question: *R. v. Osborne* (2017), 346 C.C.C. (3d) 77 (Ont. C.A.).

Criminal Code, s. 718.1

It is an error in principle to discount *Gladue* principles because the offender was raised in a non-Aboriginal community or to require a link between the offender's Aboriginal heritage and the offence: *R. v. J.L.M.* (2017), 353 C.C.C. (3d) 40 (B.C.C.A.).

Criminal Code, s. 718.2

It is an error to proceed on the basis that *Gladue* factors do not justify departing from a proportionate sentence in a given case. Rather, the point of the *Gladue*

analysis itself is to achieve a proportionate sentence: *R. v. Swampy* (2017), 347 C.C.C. (3d) 105 (Alta. C.A.).

Criminal Code, s. 719

[After *Meads*, add:] *R. v. Taylor* (2017), 346 C.C.C. (3d) 540 (Y.T. Terr. Ct.).

Pre-trial custody and statutory maximums – A sentence is illegal if the sentence imposed plus time spent in pre-trial custody exceeds the statutory maximum: *R. v. Walker* (2017), 345 C.C.C. (3d) 497 (Ont. C.A.); *R. v. Rotman* (2015), 339 O.A.C. 266 (Ont. C.A.); *R. v. Severight* (2014), 306 C.C.C. (3d) 197 (Alta. C.A.), leave to appeal to S.C.C. refused [2014] S.C.C.A. No. 184; *R. v. LeBlanc* (2005), 193 C.C.C. (3d) 387 (N.B.C.A.).

Criminal Code, s. 737

There is no discretion to circumvent the automatic imposition of the surcharge by imposing "concurrent" surcharges on multiple convictions: *R. v. Fedele* (2017), 351 C.C.C. (3d) 352 (Ont. C.A.).

Criminal Code, s. 753

Two convictions, including the predicate offence, can constitute a "pattern" within the meaning of subsec. (1)(*a*)(i). However, the fewer the incidents, the more similar they must be. If there are only two incidents, they must be remarkably similar: *R. v. Walsh* (2017), 348 C.C.C. (3d) 1 (B.C.C.A.).

Section 753(1) does not preclude a sentencing judge from considering future treatment prospects before designating an offender as dangerous and therefore is not overbroad under s. 7 of the Charter: *R. v. Boutilier*, 2017 SCC 64.

Section 753(4.1) does not lead to a grossly disproportionate sentence, contrary to s. 12 of the Charter, by presumptively imposing indeterminate detention and preventing the sentencing judge from imposing a fit sentence. Properly applied, subsec. (4.1) merely provides guidance on how a sentencing judge can properly exercise his or her discretion in accordance with the applicable objectives and principles of sentencing: *R. v. Boutilier*, *supra*. Nor is subsec. (4.1) overbroad contrary to s. 7: *R. v. Boutilier*, *supra*.

Criminal Code, s. 753.3

A person charged with breach of a long-term supervision order under subsec. (1) is not entitled to collaterally attack the validity of the Parole Board order he is alleged to have breached: *R. v. Bird* (2017), 348 C.C.C. (3d) 43 (Sask. C.A.).

Criminal Code, s. 784

A provincial court judge whose ruling is quashed via prerogative writ by the superior court has no standing to appeal the order: *Alberta (Attorney General) v. Malin* (2016), 344 C.C.C. (3d) 420 (Alta. C.A.).

Where an affected party sought to revoke a production order under s. 487.0193(4) and set aside a sealing order under s. 487.3(4), and also sought prerogative relief in the nature of *certiorari*, an appeal to the Court of Appeal lay under this section: *R. v. Vice Media Canada Inc.* (2017), 352 C.C.C. (3d) 355 (Ont. C.A.), leave to appeal to S.C.C. allowed 2017 CarswellOnt 19052.

Criminal Code, s. 810

[After *Bourque*, add:] *R. v. Walsh* (2016), 345 C.C.C. (3d) 298 (Sask. C.A.).

Canada Evidence Act, s. 4

This provision is procedural rather than substantive and accordingly, has retrospective application. Thus, a witness married to the accused is competent and compellable despite not having been so at the time that the offence was committed: *R. v. Grewal* (2017), 140 W.C.B. (2d) 529, 2017 ONSC 4099 (S.C.J.).

[After *Prokofiew* add:] *R. v. Deol* (2017), 352 C.C.C. (3d) 343 (Ont. C.A.)

Canada Evidence Act, s. 5

[Replace existing annotation for *Marcoux and Solomon* with the following:]

While there is no legal obligation to participate in a line-up, failure to do so may have legal consequences in respect of the evidence that may be admitted at trial. For example, in circumstances where the Crown must explain the omission of a line-up, the accused's refusal may be both relevant and admissible: *R. v. Ross*, [1989] 1 S.C.R. 3, 46 C.C.C. (3d) 129; *R. v. Marcoux* (1975), [1976] 1 S.C.R. 763, 24 C.C.C. (2d) 1.

The accused's after-the-fact conduct in offering to provide DNA samples and taking a lie detector test were relevant and admissible. There are policy concerns and fundamental constitutional principles at play where the Crown seeks to tender evidence of a refusal to cooperate which are not engaged when the defence tenders evidence of an accused's cooperation with the police. There is no logical inconsistency between the admission of evidence that a person cooperated with the police and the exclusion of evidence that a person did not cooperate with the police. The freedom to choose whether to assist the state in the investigation of an alleged crime would be illusory if the failure to

render assistance could, standing alone, be used as evidence against a person at trial. Similarly, the right to maintain the integrity of one's body against unauthorized state intrusion would lose its force if the exercise of that right could take on an incriminatory connotation at trial: *R. v. B. (S.C.)* (1997), 119 C.C.C. (3d) 530 (Ont. C.A.). See also *R. v. Baltrusaitis* (2002), 162 C.C.C. (3d) 539 (Ont. C.A.).

Cases decided prior to *R. v. Nedelcu*, [2012] 3 S.C.R. 311, 290 C.C.C. (3d) 153, must be read in light of its relatively narrow holding discussed below.

Canada Evidence Act, s. 8

This provision does not displace the common law rule allowing a trier of fact to undertake a comparative analysis of handwriting specimens without the need of witnesses interpreting or identifying the relevant writing. In so doing, the trier of fact must exercise caution having regard to a number of factors that can impact the assessment, including, *inter alia*, the quality of the handwriting exemplar, the lack of expertise and experience in performing the task and the lack of access to specialized equipment: *R. v. Cunsolo* (2011), 277 C.C.C. (3d) 435 (Ont. S.C.J.), affd (2014), 319 O.A.C. 278 (C.A.).

It does not follow from this section that proof of handwriting may only be accomplished by way of comparison. In this case, it was admissible for the complainant and her mother to testify that a diary adduced into evidence looked like it contained the accused's handwriting: *R. v. V. (L.)* (2016), [2017] 1 W.W.R. 439 (Sask. C.A.).

Canada Evidence Act, s. 9

In *R. v. Bradshaw* (2017), 349 C.C.C. (3d) 429, the Supreme Court of Canada reconciled the jurisprudence on threshold reliability. Corroborative evidence may be used to assess threshold reliability of hearsay statements if it overcomes the specific hearsay dangers presented by the statement. Hearsay dangers can be overcome by showing that: (1) there are adequate substitutes for testing truth and accuracy (procedural reliability); or (2) there are sufficient circumstantial or evidentiary guarantees that the statement is inherently trustworthy (substantive reliability). Procedural reliability is established where there are adequate substitutes for the testing of the evidence such as a video recording, the presence of an oath and a warning about the consequences of lying. However, some form of cross-examination of the declarant such as preliminary inquiry testimony or cross-examination of a recanting witness at trial is usually required. The standard for substantive reliability is high and requires the judge to be satisfied that the statement is so reliable that contemporaneous cross-examination of the declarant would add little if

anything to the process. Procedural reliability and substantive reliability are not mutually exclusive and may work in tandem in establishing threshold reliability. However, the threshold reliability standard always remains high to ensure that the combined approach does not lead to the admission of statements despite insufficient procedural safeguards and guarantees of inherent trustworthiness.

In considering substantive reliability, a trial judge can only rely on corroborative evidence if it shows, when considered as a whole and in the circumstances of the case, that the only likely explanation for the hearsay statement is the declarant's truthfulness about or the accuracy of the material aspects of the statements. The material aspects are those relied on by the moving party for the truth of their contents. The function of corroborative evidence at the threshold reliability stage is to mitigate the need for cross-examination not generally but on the point that the hearsay is tendered to prove. At the threshold reliability stage, corroborative evidence must work in conjunction with the circumstances to overcome the specific hearsay dangers raised by the tendered statement. Corroborative evidence must show that the material aspects of the statement are unlikely to change under cross-examination. In assessing substantial reliability, the trial judge must identify alternative, even speculative explanations for the hearsay statements. Corroborative evidence that is "equally consistent" with the truthfulness and accuracy of the statement as well as another hypothesis is of no assistance as it does not add to the statement's inherent trustworthiness. Accordingly, when considering corroborative evidence, the trial judge should: (1) identify the material aspects of the hearsay statement that are tendered for their truth; (2) identify the specific hearsay dangers raised by those aspects of the statement in the particular circumstances of the case; (3) based on the circumstances and these dangers, consider alternative, even speculative, explanations for the statement; and (4) determine whether, given the circumstances of the case, the corroborative evidence led at the *voir dire* rules out these alternative explanations such that the only remaining likely explanation is the declarant's truthfulness about or the accuracy of the material aspects of the statement.

Canada Evidence Act, s. 12

However, where the defence puts forward a witness with the intention that the jury accept the witness's evidence that he, not the accused, owned the contraband, this is not a basis to permit the Crown to cross-examine the accused on his entire criminal record: *R. v. McManus* (2017), 353 C.C.C. (3d) 493 (Ont. C.A.).

[After *Madrusan, supra*, add:] *R. v. Laing* (2016), 33 C.R. (7th) 48 (Ont. C.A.)

Canada Evidence Act, s. 14

[Replace existing annotation for *R. v. J. (T.R.)* with the following:]

An oath or affirmation are equivalent. It is an error of law to consider evidence of a witness's religious beliefs in assessing his or her credibility. While there are some very limited circumstances in which inquiry into the degree to which an oath or affirmation binds a witness's conscience is permissible, these are restricted to circumstances in which there is a reason to believe that the witness's oath or affirmation is not genuine. Such an inquiry is primarily a question of testimonial competence as opposed to credibility: *R. v. Santhosh* (2016), 342 C.C.C. (3d) 41 (Ont. C.A.). See also *R. v. J. (T.R.)* (2013), 6 C.R. (7th) 207 (B.C.C.A.).

Canada Evidence Act, s. 28

[After *Dixon*, add:] *R. v. Algafori* (2016), 99 M.V.R. (6th) 105 (Ont. S.C.J.)

Canada Evidence Act, s. 30

While a record made in the course of an investigation is inadmissible, this provision does not prevent information contained in the record of the Requesting State's case from being admitted as direct evidence in an extradition hearing: *United States of America v. New* (2017), 140 W.C.B. (2d) 154, 2017 BCCA 249 (B.C.C.A.).

Canada Evidence Act, s. 31.1

This provision is a codification of the common law rule of evidence authentication. It merely requires the party seeking to adduce an electronic document into evidence to prove that the electronic document is what it purports to be, which may be done through direct or circumstantial evidence. The integrity or reliability of the electronic document is not open to attack at the authentication stage. Those questions are to be resolved under s. 31.2: *R. v. Hirsch* (2017), 36 C.R. (7th) 216 (Sask. C.A.); *R. v. Hamdan* (2017), 349 C.C.C. (3d) 338 (B.C.S.C.).

[Replace existing annotation for *R. v. Hirsch* and *R. v. Hamdan* with the following:]

Authentication is not an onerous requirement and does not involve a consideration of the integrity and reliability of the electronic document. The party seeking to adduce an electronic document must prove through direct or circumstantial evidence that the document is what it purports to be: *R. v. Hirsch* (2017), 353 C.C.C. (3d) 230 (Sask. C.A.).

Canada Evidence Act, s. 31.2

[Replace existing annotation for *R. v. Hirsch* with the following:]

Screen captures of the accused's Facebook page were held to be the best evidence available to the Crown to adduce the contents of the page into evidence. The presumption of integrity under s. 31.3(*b*) applied: *R. v. Hirsch* (2017), 36 C.R. (7th) 216 (Sask. C.A.).

Canada Evidence Act, s. 31.3

The presumption of integrity in para. (*b*) applies to screen captures adduced from the accused's Facebook page: *R. v. Hirsch* (2017), 353 C.C.C. (3d) 230 (Sask. C.A.).

Charter, s. 11

The exceptionality of the "transitional exceptional circumstance" does not lie in the rarity of its application, but rather in its temporary justification of delay that exceeds the ceiling based on the parties' reasonable reliance on the law as it previously existed. The parties' general level of diligence, the seriousness of the offence and the absence of prejudice are all factors that should be taken into consideration, as appropriate in the circumstances. Where a balancing of factors under the *Morin* framework would have weighed in favour of a stay, the Crown will rarely, if ever, be successful in justifying the delay as a transitional exceptional circumstance under the *Jordan* framework: *R. v. Cody* (2017), 138 W.C.B. (2d) 118, 2017 SCC 31.

A potential penalty of five years less a day imprisonment plus a $5 million fine under the Alberta *Securities Act* does not engage the protection of s. 11(*f*) and entitle the accused to a jury trial: *R. v. Peers* (2017), 346 C.C.C. (3d) 463 (S.C.C.), affirming (2015), 330 C.C.C. (3d) 175 (Alta. C.A.).

The presumptive ceilings established in *R. v. Jordan*, *supra*, do not apply throughout the sentencing process: *R. v. Warring* (2017), 347 C.C.C. (3d) 391 (Alta. C.A.).

Charter, s. 24

In *R. v. Cody* (2017), 138 W.C.B. (2d) 118, 2017 SCC 31, the court strongly endorsed the use of the screening procedure established by *Kutynec*, *supra*, and *R. v. Vukelich* (1996), 108 C.C.C. (3d) 193 (B.C.C.A.), leave to appeal to S.C.C. refused [1997] 2 S.C.R. xvi, in order to minimize delay. Before permitting an application to proceed, a trial judge should consider whether it has a reasonable prospect of success. This may entail asking defence counsel to

summarize the evidence it anticipates eliciting in the *voir dire* and, where that summary reveals no basis upon which the application could succeed, dismissing the application summarily. Where an application is permitted to proceed, a trial judge should not hesitate to summarily dismiss applications and requests the moment it becomes apparent they are frivolous.

Remedies under subsec. (1) – Because of the breadth of the phrase "appropriate and just", a court of competent jurisdiction" has broad discretion to determine what remedy to grant in the circumstances of a particular case. It is improper for courts to reduce this discretion by casting it in a strait-jacket of judicially prescribed conditions. What is appropriate and just will depend on the facts and circumstances of the particular case. An appropriate and just remedy will: (1) meaningfully vindicate the rights and freedoms of the claimants; (2) employ means that are legitimate within the framework of our constitutional democracy; (3) be a judicial remedy which vindicates the right while invoking the function and powers of a court; and (4) be fair to the party against whom the order is made: *Vancouver (City) v. Ward*, [2010] 2 S.C.R. 28.

A stay of proceedings for an abuse of process will only be warranted in the clearest of cases. Two types of state conduct may warrant a stay: conduct that compromises the fairness of an accused's trial (the "main" category); or conduct that risks undermining the integrity of the judicial process (the "residual" category). The test for determining whether a stay of proceedings is warranted is the same for both categories and consists of three requirements: (1) there must be prejudice to the accused's right to a fair trial or to the integrity of the justice system that will be manifested, perpetuated or aggravated through the conduct of the trial, or by its outcome; (2) there must be no alternative remedy capable of redressing the prejudice; and (3) where there is still uncertainty over whether a stay is warranted after steps 1 and 2, the court must balance the interests in favour of granting a stay against the interest that society has in having a final decision on the merits: *R. v. Babos*, [2014] 1 S.C.R. 309, 308 C.C.C. (3d) 445.

In some exceptional cases, a sentence reduction outside statutory limits may be an appropriate remedy under subsec. (1) for some particularly egregious form of misconduct by state agents in relation to the offence and the offender: *R. v. Nasogaluak*, [2010] 1 S.C.R. 206, 251 C.C.C. (3d) 293. It is an error to grant such a remedy where that stringent threshold is not met: *R. v. Donnelly* (2016), 345 C.C.C. (3d) 56 (Ont. C.A.); *R. v. Gowdy* (2016), 345 C.C.C. (3d) 174 (Ont. C.A.), leave to appeal to S.C.C. refused *Kris Gowdy v. Her Majesty the Queen*, 2017 CarswellOnt 11383.

A costs award against the Crown will not be an "appropriate and just remedy" under subsec. (1) absent a finding that the Crown's conduct demonstrated a marked and unacceptable departure from the reasonable standards expected of the prosecution, or something that is rare or unique that must at least result in something akin to an extreme hardship on the defendant: *R. v. Singh* (2016), 334 C.C.C. (3d) 481 (Ont. C.A.).

Where the propriety of a remedy granted under subsec. (1) is at issue, appellate intervention is warranted only where a trial judge misdirects him or herself in law, commits a reviewable error of fact, or renders a decision that is so clearly wrong as to amount to an injustice: *R. v. Babos*, [2014] 1 S.C.R. 309, 308 C.C.C. (3d) 445.

In practical terms, the third inquiry becomes important when one, but not both, of the first two inquiries pushes strongly toward the exclusion of the evidence. If the first and second inquiries make a strong case for exclusion, the third inquiry will seldom, if ever, tip the balance in favour of admissibility. Similarly, if both of the first two inquiries provide weaker support for exclusion of the evidence, the third inquiry will almost certainly confirm the admissibility of the evidence: *R. v. McGuffie* (2016), 336 C.C.C. (3d) 486 (Ont. C.A.). See also: *R. v. Paterson* (2017), 347 C.C.C. (3d) 280 (S.C.C.).

Controlled Drugs and Substances Act, s. 5

While the Regulations do not provide a specific exemption for a person who cohabits with someone who has obtained a narcotic for personal use under a valid prescription, such an exemption must be implied to avoid criminalizing vast swaths of harmless conduct. Where the prescription holder deals with the drugs beyond the scope of permitted use, the cohabiting party can only be liable if he or she knows that the prescription holder is misusing the drugs: *R. v. Pilgrim* (2017), 347 C.C.C. (3d) 141 (Ont. C.A.).

Controlled Drugs and Substances Act, s. 6

Constitutional considerations – The mandatory minimum sentence prescribed by subsec. (3)(*a*)(i) is contrary to s. 12 of the Charter and not justified under s. 1: *R. v. Duffus* (2017), 346 C.C.C. (3d) 121 (Ont. S.C.J.).

Controlled Drugs and Substances Act, s. 7

The six-month minimum sentence mandated by subsec. (2)(*b*)(i) is contrary to the s. 12 Charter guarantee against cruel and unusual punishment and is not justified by s. 1: *R. v. Elliott* (2017), 349 C.C.C. (3d) 1 (B.C.C.A.).

Controlled Drugs and Substances Act, s. 11

Unlike warrants issued under the *Criminal Code*, there is no statutory presumption that warrants issued under this provision are to be executed before 9:00 pm. However, the time of execution may factor into the reasonableness of the manner of execution: *R. v. Shivrattan* (2017), 346 C.C.C. (3d) 299 (Ont. C.A.), leave to appeal to S.C.C. refused 2017 CarswellOnt 11385.

A warrant issued under this provision authorizing the police to execute a search "at any time" refers to the lack of a daytime execution requirement and does not confer an open-ended authority to search in perpetuity. An implied time limitation can be inferred from the circumstances: *R. v. Saint*, 2017 ONCA 491.